# TRANSCRIPT OF RECORD

## Supreme Court of the United States

OCTOBER TERM, 1935.

## No. 114

Commonwealth Government of the

JUAN POSADAS, JR., COLLECTOR OF INTERNAL REVENUE OF THE PHILIPPINE ISLANDS, PETITIONER,

*vs.*

THE NATIONAL CITY BANK OF NEW YORK.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

PETITION FOR CERTIORARI FILED JUNE 8, 1935.

CERTIORARI GRANTED OCTOBER 14, 1935.

# SUPREME COURT OF THE UNITED STATES

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G. R. No. 41032

# United States of America

## Philippine Islands

## Supreme Court of the Philippine Islands

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[Court of First Instance No. 32116. Supreme Court G. R. No. 41032]

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THE NATIONAL CITY BANK OF NEW YORK
Plaintiff-Appellant

VERSUS

JUAN POSADAS, JR., Collector of Internal Revenue of the Philippine Islands, Defendant-Appellant

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### APPELLATE JURISDICTION

BE IT REMEMBERED that in the above-entitled case and on the respective dates hereinafter set forth, there were had in the Court of First Instance of Manila and in the Supreme Court of the Philippine Islands, among others, the following proceedings:

### PROCEEDINGS IN THE COURT OF FIRST INSTANCE OF MANILA

On June 7, 1932, the plaintiff, the National City Bank of New York, by its attorneys, Messrs. Ross,

Lawrence & Selph, filed a complaint, which reads as follows:

[CAPTION OMITTED]

COMPLAINT

Comes now the plaintiff and for cause of action against the defendant, as Collector of Internal Revenue of the Philippine Islands, alleges:

I

That it is and has been during all the times mentioned herein a national banking association organized and existing under the laws of the United States of America and duly authorized by the Federal Reserve Board of the United States of America and by the proper authorities of the Philippine Government to do business in the Philippine Islands and having its principal place of business therein at Manila; that the defendant is of lawful age, a resident of Manila, and is and has been during all the times mentioned herein the duly appointed, qualified and acting Collector of Internal Revenue of the Philippine Islands;

II

That on October 23, 1931, the Collector demanded and received from plaintiff the sum of seventy-seven thousand three hundred twenty-four pesos and eleven centavos (₱77,324.11), as deposit and capital taxes for the first half of the year 1931. That for the same period the Collector has demanded and received a return of income upon which income tax will be collected. That the Administrative Code of the Philippine Islands provides for the collection from all banks doing business in the Philippine Islands of deposit and cap-

ital taxes and Act 2833 as amended, provides for the collection of income taxes from all corporations and associations doing business in the Philippine Islands and deriving income therefrom. That under the *laws of the United States* national banks are instrumentalities of the United States of America upon which no taxes may be levied except as provided by the laws of the United States of America. The law of the United States of America permitting the taxation of national banks (section 548, United States Code, Annotated), reads as follows:

> "548. *States taxation.*—The legislature of each State may determine and direct, subject to the provisions of this section, the manner and place of taxing all the shares of national banking associations located within its limits. The several States may (1) tax said shares, or (2) include dividends derived therefrom in the taxable income of an owner or holder thereof, or (3) tax such associations on their net income, or (4) according to or measured by their net income, provided the following conditions are complied with:
>
> "1. (*a*) The imposition by any State of any one of the above four forms of taxation shall be in lieu of the others, except as hereinafter provided in subdivision (*c*) of this clause.
>
> "(*b*) In the case of a tax on said shares the tax imposed shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State coming into competition with the business of national banks: *Provided*, That bonds, notes, or other evidences of indebtedness in the hands of individual citi-

zens not employed or engaged in the banking or investment business and representing merely personal investments not made in competition with such business, shall not be deemed moneyed capital within the meaning of this section.

"(*c*) In case of a tax on or according to or measured by the net income of an association, the taxing State may, except in case of a tax on net income, include the entire net income received from all sources, but the rate shall not be higher than the rate assessed upon other financial corporations nor higher than the highest of the rates assessed by the taxing State upon mercantile, manufacturing, and business corporations, doing business within its limits: *Provided, however*, That a State which imposes a tax on or according to or measured by the net income of, or a franchise or excise tax on, financial, mercantile, manufacturing, and business corporations organized under its own laws or laws of other States and also imposes a tax upon the income of individuals, may include in such individual income dividends from national banking associations located within the State on condition that it also includes dividends from domestic corporations and may likewise include dividends from national banking associations located without the State on condition that it also includes dividends from foreign corporations, but at no higher rate than is imposed on dividends from such other corporations.

"(*d*) In case the dividends derived from the said shares are taxed, the tax shall not be at a

greater rate than is assessed upon the net income from other moneyed capital.

"2. The shares of any national banking association owned by nonresidents of any State, shall be taxed by the taxing district or by the State where the association is located and not elsewhere; and such association shall make return of such shares and pay the tax thereon as agent of such nonresident shareholders.

"3. Nothing herein shall be construed to exempt the real property of associations from taxation in any State or in any subdivision thereof, of the same extent, according to its value, as other real property is taxed.

"4. The provisions of section 5219 of the Revised Statutes of the United States as in force prior to March 25, 1926, shall not prevent the legalizing, ratifying, or confirming by the States of any tax heretofore paid, levied, or assessed upon the shares of national banks, or the collecting thereof, to the extent that such tax would be valid under said section." (As amended March 25, 1926, c. 88, 44 Stat. 223.)

That there is no provision in the laws of the United States of America authorizing the Philippine Government to tax a national banking association both upon its capital and deposits and also impose an income tax upon its earnings;

III

That plaintiff paid said taxes involuntarily and under threat by the defendant of the exaction of pen-

alties, fines and forfeitures. That at the time of payment, plaintiff filed a protest reading as follows:

"The COLLECTOR OF INTERNAL REVENUE,
"Manila, P. I.

"DEAR SIR:

"We enclose our cheque for ₱77,324.11 in payment of Deposit and Capital Taxes for the period January/June, 1931.

"This payment is made under protest and duress and solely to avoid penalties, fines and forfeitures.

"The grounds of such protest are as follows:

"(1) That the National City Bank of New York is a national banking association duly organized under the United States National Banking Act and is an agency of the United States created under its laws to promote the fiscal policies of the United States.

"(2) That the National City Bank of New York has been duly authorized by the Federal Reserve Board to establish a branch in the Philippine Islands, and is now operating the same under the provisions of the United States Federal Reserve Act.

"(3) That no State, territory or possession of the United States or any subdivision thereof has the power to tax national banks except as Congress expressly permits; that no such power has been granted to the Philippine Government.

"(4) That under the provisions of the Na-

tional Banking Act (sec. 548, Title 12, U. S. Code) each State may tax national banking associations in any one of four forms but the imposition of any one of such forms shall be in lieu of the others except that in the case of a tax upon net income, individuals may be taxed upon dividends from national banking associations if the law of the State provides for such a tax upon all business corporations and dividends therefrom.

"(5) That the Philippine Islands imposes a tax upon net income and is therefore without power to impose any capital deposit, or other tax of any kind upon such national banking association."

IV

That plaintiff demanded the refund of the said sum of seventy-seven thousand three hundred twenty-four pesos and eleven centavos (₱77,324.11), but defendant overruled said protest and has refused to refund to plaintiff the said amount and no part thereof has been paid.

Wherefore, plaintiff prays for judgment against the defendant for the sum of seventy-seven thousand three hundred twenty-four pesos and eleven centavos (₱77,324.11) with interest thereon and costs of suit.

On July 7, 1932, the defendant, Juan Posadas, Jr., Collector of Internal Revenue of the Philippine Islands, by the then Attorney-General of the Philippine

Islands, filed an answer in the words and figures following:

[CAPTION OMITTED]

ANSWER

Comes now the defendant by the undersigned Attorney-General and in answer to plaintiff's complaint alleges:

That he denies generally and specifically each and every allegation contained in said complaint.

As special defense the defendant alleges:

1. That the sum of ₱77,324.11, referred to in paragraph II of the complaint, was collected from, and paid under protest by, the plaintiff on October 23, 1931, as taxes on capital and deposits, under the provisions of section 1499 of the Administrative Code, as amended by Act 3199.

2. That since the payment to the defendant of the above-mentioned amount up to the filing of the complaint in this case, the plaintiff has not made any demand on the defendant either to take action on its protest or to refund the said amount.

3. That at the time of the filing of the complaint in this case on June 7, 1932, the plaintiff had no cause of action against the defendant, for up to that time no action on its protest had been taken by the defendant and the period within which such action may be taken had not yet elapsed.

Wherefore, defendant prays this Honorable Court to dismiss the complaint filed in this case with costs to the plaintiff.

On August 28, 1933, this case was heard by the Court of First Instance of Manila, and in said hearing

the parties presented the following oral and documentary evidence:

## ORAL EVIDENCE

[CAPTION OMITTED]

TRANSCRIPT

of the stenographic notes taken at the hearing of the above-entitled case before the Honorable Mariano A. Albert, Judge, on August 28, 1933, at 10 a. m.

APPEARANCES:

Attorneys James Ross and Robert Janda, of the law offices of Ross, Lawrence & Selph, for the plaintiff;

Assistant Attorney Felipe Natividad, of the Office of the Solicitor-General, for the defendant.

PRESENT:

Mr. Ildefonso Daria, Deputy Clerk of Court;
Mr. Jose Cruz Herrera, Interpreter;
Pablo Santiago, Stenographer.

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EVIDENCE FOR THE PLAINTIFF

RICHARD E. SHAW, after first being duly sworn, testified as follows:

"DIRECT EXAMINATION BY MR. ROSS

"Q. Please state your name and other personal circumstances?

"A. Richard E. Shaw, 47 years old, married, banker, residing at 3–A, Meadowbrook Lane, Pasay, Rizal.

"Q. Mr. Shaw, what position do you occupy with the National City Bank of New York, Manila?

"A. I am Manager of the National City Bank of New York, Manila.

"Mr. Ross. For the convenience of the court, we submit a memorandum of the facts which we expect to prove in this case. (Same was handed over to the court.) We present a certified copy of the Articles of Incorporation of the National City Bank of New York, which we ask to be marked Exhibit A for identification.

"Q. Under what authority was the local branch of The National City Bank of New York established?

"A. It was established by virtue of the authorization given by the Federal Reserve Board.

"Mr. Ross. We present a certified copy of the order of the Federal Reserve Board granting permission to the National City Bank of New York to establish branches in Manila, Cebu, Philippine Islands, and we ask that it be marked Exhibit B for identification.

"Q. Mr. Shaw, will you state to the court what relation the Manila branch of the National City Bank of New York bears to the National City Bank of New York itself?

"A. The National City Bank of New York, in Manila, is not a separate organization, but it is an integral part of the National City Bank of New York, New York.

"Q. Does the Manila office of the National City Bank of New York have any capital stock

separate from that of the National City Bank of New York, in the City of New York?

"A. No, sir; no capital is allotted to the Manila branch of the National City Bank of New York.

"Mr. Ross. We present in evidence the document which we ask to be marked Exhibit C, for purposes of identification, the same being a certified copy of the By-Laws of the National City Bank of New York.

"Q. Showing to you, Mr. Shaw, the document which has been marked for identification as Exhibit D, and I ask you to state to the court what it is?

"A. This document is a consolidated balance sheet of all the branches of the National City Bank of New York, showing the conditions of the bank as of June 30, 1931.

"Q. Will you state to the court whether or not you receive those balance sheets from New York periodically?

"A. We do.

"Q. And do they form part of the records of the Manila branch of the National City Bank of New York?

"A. Copies are held in our records.

"Q. I ask you to state to the court, Mr. Shaw, under what authority do you act as manager of the Manila branch of the National City Bank of New York?

"A. By virtue of the power of attorney which was granted to me by the head office, in New York.

"Mr. Ross. We present as evidence the document which we ask to be marked for the purpose of identification as Exhibit E, the same being a certified copy of the power of attorney executed by the National City Bank of New York in favor of the witness, Mr. Richard E. Shaw.

"If Your Honor please, if there is no objection on the part of opposing counsel, we have here a certified copy of Exhibit E, which is a certified copy of the certificate issued by the Bureau of Commerce and Industry, and we would like to present this as a substitute for the original certificate.

"COURT. Any objection?

"Mr. Ross. We would like to substitute that for the official certificate, in order that Mr. Shaw may retain the official certificate in his office.

"Mr. NATIVIDAD. No objection, Your Honor.

"Mr. Ross. We ask that the notarial or certified copy be marked as Exhibit E, and I understand that we have the court's permission to withdraw the original certificate.

"Q. Will you please state to the court, Mr. Shaw, what supervision and inspection the head office of the National City Bank of New York exercise over the Manila branch?

"A. The President of the National City Bank of New York, New York, appoints vice-presidents, assistant cashiers, and other officers in New York, who are directly responsible for the activities of the Manila branch, and gives in-

structions by cable and by letters from time to time, and in addition to this a corps of inspectors makes periodical visits to this branch and examines all advances and everything pertaining to the business of the Manila branch of the National City Bank of New York.

"Q. Will you state to the court what supervision, visitation and examination, if any, are conducted by the Federal authorities with respect to the Manila branch of the National City Bank of New York?

"Mr. NATIVIDAD. Is there any provision in the by-laws of the bank dealing with the supervision of the local branch by the Federal authorities?

"WITNESS. Yes.

"Mr. ROSS. Q. Although it is not in the by-laws, it is done?

"A. Yes, it is done.

"The National Bank Examiner examines this branch from time to time. The last visit was made during the months of April and May, of 1932, by a National Bank Examiner by the name of Prickett.

"Q. How long did Mr. Prickett require to make this examination of the Manila branch of the National City Bank of New York?

"A. He arrived on the 4th of April, 1932, and completed his examination on May 9, 1932.

"Q. What can you say as to the extent and thoroughness of the examination and inspection made by the Federal National Bank Examiner, Mr. Prickett?

"A. He examined very carefully all advances, loans, overdrafts, and every matter of importance in the bank.

"Q. Please state to the court, Mr. Shaw, where and how the banking policies of the Manila branch of the National City Bank of New York are made or formulated?

"A. The policies governing the operations of the Manila branch of the National City Bank of New York are formulated in and dictated by our head office in New York.

"Q. Please state to the court how the banking operations of the Manila branch of the National City Bank of New York are carried on?

"A. These are carried on in accordance with our Articles of Incorporation and By-Laws, and are strictly limited by our head office.

"Q. Are those instructions followed strictly?

"A. Absolutely.

"Q. I notice in the order granting permission to the National City Bank of New York to establish branches in the Philippine Islands, Exhibit B, that Cebu is included, and I ask you to state to the court whether or not the methods of doing business,—examination, thorough inspection, etc.,—to which you have just testified, apply to the Cebu branch for the year 1931?

"A. Exactly the same rules and regulations apply to the Cebu branch of the National City

Bank of New York as to this branch at the present time.

"Mr. Ross. That is all."

"CROSS-EXAMINATION BY MR. TRINIDAD

"Q. If I remember correctly, Mr. Shaw, you stated that the local branch of the National City Bank of New York does not have a fixed capital and that the capital employed by the bank here is taken from the home office. Can you tell us the authorized capital of the National City Bank of New York in the head office?

"Mr. Ross. I might state for the information of the Solicitor-General and the court that that appears in Exhibit A, Articles of Incorporation, the original capital stock being $110,000,000.

"WITNESS. The original capital stock as indicated in that Exhibit A is $110,000,000, gold.

"Mr. NATIVIDAD. (Continuing.) Q. This is the capital of the National City Bank of New York in all its branches in the different parts of the world, is that right?

"A. Yes, sir.

"Q. Can you tell us, Mr. Shaw, if this capital has been exceeded by the National City Bank of New York?

"A. The capital has been altered from time to time. For instance, the capital as of June 30, 1933, is $124,000,000.

"Q. And that capital as of June 30, 1933, in the amount of $124,000,000 has been employed by the National City Bank of New York in all its activities throughout the world, is it not?

"A. Yes, sir.

"Q. Do you know what portion of that capital has been employed in the Philippine Islands?

"A. I could not say.

"Q. Can you tell us, Mr. Shaw, what kind of banking operations the local branch of the National City Bank of New York was engaged in the Philippine Islands?

"A. We engage in only those operations which are authorized under our Articles of Association and under our By-Laws, which again may be limited or changed under instructions from our head office.

"Q. Can you specify those banking operations in which the local branch of the National City Bank of New York is engaged?

"A. Buying and selling of foreign exchanges, the operation of current accounts, the selling of drafts on various parts of the world, savings department, and such other various activities as are authorized by our head office.

"Q. Does your bank engage in loaning money on real estates?

"A. It does, to a limited extent.

"Q. In other words, Mr. Shaw, the local branch of the National City Bank of New York is engaged in general banking business?

"A. Only such banking business as is permitted by our head office.

"Q. Can you state more or less how much yearly is allotted to your local branch here, to the branch of the National City Bank of New York in Manila, as capital?

"A. There is no such allotment of capital to the Manila Branch of the National City Bank of New York.

"Q. How do you run the bank, with what capital do you run the bank?

"A. We can secure loans or funds from our head office at any time it is needed. In case our local advances, loans, etc., exceed the amount of deposits, we can always borrow funds from our New York office in whatever amount may be required.

"Q. Up to what amount are you authorized to borrow?

"A. There is no limit set.

"Mr. NATIVIDAD. That is all."

"REDIRECT EXAMINATION BY MR. ROSS

"Q. Mr. Shaw, will you explain to the court a little more in detail what you meant by saying that the local branch of the National City Bank of New York borrows from the New York office. Please tell the court how those arrangements are carried out?

"A. We maintain running balances on our books. For instance, to go into the technicalities, the account of the Manila office in New York is called 'Manila Our Account,' and from time to time, as bills which are sent forward for collection mature, proceeds are collected by our head office and credited to that account.

They will thereby lay down funds in New York, from which we make drawings, cash telegraphic transfers, and issue drafts. As the total of the drawings exceed the amount which have been credited, then we go into the debit balance, and we are authorized to do that by our head office to whatever extent we need. For instance, we might maintain a credit balance with our New York office to the extent of five million dollars or seven million dollars, or on the other hand, the accounts might run into the debit balance. In other words, we might owe our New York office similar amounts.

"Mr. Ross. That is all."

JOAQUIN A. MONTENEGRO, after first being duly sworn, testified as follows:

"DIRECT EXAMINATION BY MR. JANDA

"Q. Please state your name and other personal circumstances?

"A. Joaquin A. Montenegro, 47 years old, married, Income Tax Examiner, Bureau of Internal Revenue, residing at 50 Riverside, San Juan del Monte, Rizal.

"Q. You were subpœnaed to bring to the court certain documents, did you bring them?

"A. I did.

"Q. Where are they?

"A. They are here (witness exhibiting certain documents).

"Mr. JANDA. I ask that this document be marked Exhibit F.

"Q. I show you this document marked Exhibit F, will you please explain what it is?

"A. This is a semi-annual statement of capital and deposits submitted by the National City Bank of New York, in Manila, upon which the payment of capital and deposit taxes was based.

"Q. For what period is that?

"A. For the period from January 1, 1931, to June 30, 1931.

"Q. I show you this document which is marked as Exhibit G, will you explain to the court what it is?

"A. This is the income tax return filed by the National City Bank of New York for the year 1931.

"Q. I show you this document which is marked Exhibit H, will you explain to the court what that is?

"A. This is the carbon copy of the official receipt for income tax paid by the National City Bank of New York upon the return submitted for the year 1931.

"Q. I show you this document which is marked Exhibit I, will you explain to the court what that is?

"A. This is the receipt for capital and deposit taxes paid by the National City Bank of New York for the period from January 1st to June 30, 1931.

"Q. I show you this document, marked Exhibit J, will you explain to the court what that is?

"A. This is the letter of the Manila branch of the National City Bank of New York, enclosing a check in payment of that statement Exhibit F, stating that the payment is made under protest and giving the reasons therefor.

"Mr. JANDA. That is all.

"Mr. NATIVIDAD. No cross-examination."

WILLIAM L. BULKELEY, after first being duly sworn, testified as follows:

"DIRECT EXAMINATION BY MR. JANDA

"Q. Please state your name, and other personal circumstances?

"A. William L. Bulkeley, 32 years old, married, Acting Accountant, National City Bank of New York, residing in Patio de Pasay, Pasay, Rizal.

"Q. I show you, Mr. Bulkeley, this document marked Exhibit F, inviting your attention to the figure 16,104.68, will you explain to the court what that figure is?

"A. This figure represents the capital tax paid by the Manila Branch of the National City Bank of New York for the period January to June 30, 1931.

"Q. Will you explain to the court the theory on which that figure was computed?

"A. The capital tax is computed in accordance with the provisions of the Administrative Code.

"Q. Will you give the court the detailed figures showing the computation of this particular figure for the year 1931?

"Mr. JANDA. I suggest, if counsel has no objection, that we introduce this sheet which explains that. It would save the time of the court and the parties herein.

"COURT. (To the witness.) Q. Have you prepared a computation?

"A. Yes, Your Honor, here is the computation.

"Mr. JANDA. Q. Will you explain these figures?

"COURT. It is not necessary. Just mark the computation as Exhibit K.

"Q. This computation was prepared by you, was it not?

"A. It was prepared under my supervision.

"Q. Have you examined this computation now?

"A. Yes, Your Honor.

"Q. Did you find it correct?

"A. Yes, Your Honor.

"COURT. Go ahead.

"Mr. JANDA. (Continuing with the witness.) Q. Go ahead.

"A. The capital of the Philippine branch is based upon the following proportion: The capital surplus and undivided profits of the corporation, is to X which is the unknown factor, as the entire corporation profits, is to the Philippine branch profits.

"Q. Before you proceed, you used the word "capital," when you used that word you merely meant an arbitrary figure, did you not?

"A. Yes.

"Q. You did not necessarily mean the capital that was actually employed in the Philippine Islands, did you?

"A. No.

"Q. It was not the capital that was employed, was it?

"A. It was not.

"Q. It was merely arbitrary?

"A. Yes. The total capital structure of the National City Bank of New York on December 31, 1930, was $224,554,298.54. The total corporation profits for the period ending June 30, 1931, were $10,690,303.41. The total Philippine branch profits were $151,851.11. To make up the proportion, the capital as of the beginning of January is taken, and to that is added the monthly average of the corporation profits for the six months, which amounted to $1,781,717.24. That is carried forward, giving the February capital. It is again added on to give the March capital. From the March capital is deducted the amount paid as dividends on March 31, 1931, or $4,510,000, then the average of $1,781,717.24, is again added to give the May capital, and again it is added to give the final capital in June. The various amounts representing the January, February, March, April, May, and June capital, as made up in this manner, are added together and divided by six to get the average capital employed by the institution. The average capital is then taken,

in the ratio as originally stated by me, to the entire corporation profits, as to the Philippine profits, and gives the total capital employed in the Philippine Islands, as outlined by the Administrative Code, or ₱6,441,872.28. The tax on this for the six months is one-fourth of 1 per cent or ₱16,104.68.

"Q. Mr. Shaw testified as to the inspections of the local branches of the National City Bank of New York periodically made by agents sent up by the Comptroller of Currency of the United States, is that right?

"A. That is correct.

"Q. Will you explain the nature of the inspections carried on by this official during his periodical visits?

"A. The last visit of the National Bank Examiner made in April, 1932, comprised a complete and thorough examination of the books of the branch.

"Q. What other supervision is exercised by the Federal Government over the local branch of the National City Bank of New York?

"A. We are required to make reports from time to time to the Comptroller of Currency at Washington, in accordance with the request made by him.

"Q. Was that report made for the period ending June 30, 1931?

"A. Yes, sir.

"Q. I show you this document marked Exhibit L, will you explain to the court what that is?

"A. This is a report made to the Comptroller of Currency, in accordance with his request, as of the close of business on June 30, 1931.

"Q. I notice that this is made on a printed form, who prepares this form?

"A. These forms are received by us from our New York office, who in turn received them from the Treasury Department, in Washington, D. C.

"Q. In other words, the forms printed by the Bureau of Printing, Washington, D. C.?

"A. Yes, sir.

"Q. How frequently are these reports made?

"A. The Comptroller of Currency, Washington, D. C., is required by law to request each national bank to make a report of its condition at least three times a year. For the past two years, it has been in the habit of calling for such a report once every three months.

"Q. Will you explain to the court the nature of the report made?

"A. The report made consisted of a general balance sheet, of the resources and liabilities, supported by various schedules, breaking down the items given in the general balance sheet into the required subdivisions.

"Q. You said 'breaking down,' will you explain to the court the meaning of that?

"A. For example, if item No. 1 under resources is loans and discounts, it is stated that it must agree with schedule E in the report. If you refer to schedule E, you will see that they

wish this amount made up in these varios subdivisions. That is what I meant by 'breaking down.'

"Q. Does the National City Bank of New York, in Manila, ever hear further from these reports turned in?

"A. No, it does not hear any further from these particular reports, unless there are some items to be criticized.

"Q. What is the source of these criticisms?

"A. The various loans, for example, are reported to the New York office and details examined by the national banking authorities. Such loans as they may consider subject to criticisms are again referred to us for further details, which we furnish.

"Q. Did the National City Bank of New York pay income tax for the year 1931?

"A. Yes, sir.

"Q. Did the National City Bank of New York pay capital and deposit taxes for the year 1931?

"A. Yes, sir.

"Q. Was this tax paid under protest?

"A. The capital and deposit taxes for the period January to June 30, 1931, was paid under protest.

"Q. Can you give the approximate amount of capital and deposit taxes paid by the National City Bank of New York for the period from January 1, 1931, to June 30, 1931?

"Mr. NATIVIDAD. That amount appears in the statement, does it not?

"Mr. ROSS. For the convenience of the court, the approximate amount is P77,000.

"Mr. JANDA. That is all."

"CROSS-EXAMINATION BY MR. NATIVIDAD

"Q. These periodical examinations of your accounts here, which you have referred to in the course of your direct testimony, were made by the officials of the National City Bank of New York, were they not?

"A. I don't believe I understand the question.

"Q. You have just stated in the course of your testimony that periodically your accounts and books here are examined; those examinations were made by the officials of the Central office, were they not?

"A. The statement I made was to the effect that the books were examined by a national bank examiner.

"Q. And the national bank examiner was responsible to your head office, was he not?

"A. No, he was responsible to the Comptroller of Currency, Washington, D. C.

"Q. As an official of the U. S. Government?

"A. Yes, sir.

"Q. In the computation of the capital of the local branch of the National City Bank of New York, which you made for the purpose of com-

plying with the requirements of the law here about the payment of taxes on deposits and capitals, did you include the assets of the International Banking Corporation which was acquired by the National City Bank of New York?

"A. All the assets of the International Banking Corporation were taken over by the National City Bank of New York and the same were incorporated in the assets of the National City Bank of New York.

"Q. Your total must include also the assets of the International Banking Corporation, must it not?

"A. The International Banking Corporation has no assets in the Philippine Islands at the present time.

"Q. But it has pending banking transactions, has it not?

"A. Those were taken over by the National City Bank of New York.

"Q. Is it not a fact that the local branch of the National City Bank of New York continues to do business with the International Banking Corporation?

"A. The International Banking Corporation is still in existence but for the use of certain trusts which could not be transferred to the National City Bank of New York.

"Q. Were you connected with the International Banking Corporation prior to its acquisition by the National City Bank of New York?

"A. Not in Manila.

"Q. Where?

"A. Barcelona, Spain.

"Mr. NATIVIDAD. That is all."

"REDIRECT EXAMINATION BY MR. ROSS

"Q. Do you know the date on which the assets of the International Banking Corporation were taken over by the National City Bank of New York?

"A. As of the close of business on March 26, 1930.

"Mr. ROSS. That is all. We offer in evidence the documents which are marked as Exhibits A to L, inclusive, with the understanding heretofore entered into as to the substitution of certified copies for certain documents placed in evidence by the representative of the Collector of Internal Revenue, which are Exhibits F to J, inclusive.

"COURT. Any objection?

"Mr. NATIVIDAD. No objection as to the admission of Exhibits A, B, C, and D, if Exhibit D is presented as part of the testimony of Mr. Shaw.

"Mr. ROSS. It is so presented.

"Mr. NATIVIDAD. No objection as to Exhibits E, F, G, H, I, J, and K, if Exhibit K was pre-

sented as part of the testimony of the witness Mr. Bulkeley?

"Mr. ROSS. It is so presented.

"COURT. Exhibits A to L, inclusive, are admitted in evidence.

"Mr. ROSS. That is all, Your Honor. We submit the case.

"Mr. NATIVIDAD. We have no evidence to present.

"COURT. The plaintiff is given five days within which to submit a memorandum, and the Solicitor-General ten days within which to make a reply, reserving the right to the plaintiff to file a reply to the memorandum of the Solicitor-General."

For the transcript:

(Sgd.) PABLO SANTIAGO
*Stenographer*

## DOCUMENTARY EVIDENCE

### Exhibit A

THE GOVERNMENT OF THE PHILIPPINE ISLANDS
DEPARTMENT OF AGRICULTURE AND COMMERCE
BUREAU OF COMMERCE
MERCANTILE REGISTER

TO ALL TO WHOM THESE PRESENTS MAY COME, GREETING:

*This is to certify* That the annexed is a true and complete transcript of the Articles of Incorporation of

The National City Bank of New York which were duly filed with the Mercantile Register of the Bureau of Commerce on the 19th day of March, *Anno Domini* nineteen hundred and thirty.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the seal of the said Register to be affixed at Manila, this nineteenth day of July, *Anno Domini* nineteen hundred and thirty-three.

(SEAL.) (Sgd.) TOMAS CONFESOR
*Director*

No. 390

UNITED STATES OF AMERICA

[SEAL]

DEPARTMENT OF STATE

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETING:

I CERTIFY That the document hereunto annexed is under the Seal of the Treasury Department,

IN TESTIMONY WHEREOF, I, Henry L. Stimson, Secretary of State, have hereunto caused the Seal of the Department of State to be affixed and my name subscribed by the Chief Clerk of the said Department, at the City of Washington, in the District of Columbia, this twentieth day of January, 1930.

(Sgd.) HENRY L. STIMSON
*Secretary of State*

By (Sgd.) E. JAYERS
*Chief Clerk*

(SEAL.)

UNITED STATES OF AMERICA
TREASURY DEPARTMENT
WASHINGTON, D. C.

JANUARY 18, 1930

Pursuant to section 882 of the Revised Statutes of the United States of America, I hereby certify that the signature of F. G. Awalt as Acting Comptroller of the Currency, to the paper dated January 18, 1930 hereto attached, is his genuine signature, and that the seal of the Office of the Comptroller of the Currency affixed thereto in attestation thereof is the official seal of the Comptroller of the Currency.

IN WITNESS WHEREOF, I have hereunto set my hand, and caused the seal of the Treasury Department to be affixed, on the day and year first above written.

By direction of the Secretary:

(Sgd.) S. LOWMAN
*Assistant Secretary of the Treasury*

(SEAL.)

CERTIFICATE FOR CERTIFIED COPY

TREASURY DEPARTMENT
OFFICE OF THE
COMPTROLLER OF THE CURRENCY } *ss.*

Under the provisions of Section 884 of the Revised Statutes of the United States, I F. G. Awalt, Acting Comptroller of the Currency, do hereby certify that the paper hereto attached is a true and complete copy of the original Articles of Association of The National

City Bank of New York, N. Y., as amended January 10, 1928, and June 29, 1929.
and of the whole of such original and amendments on file and of record in this office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused my seal of office to be affixed to these presents at the Treasury Department, in the City of Washington and District of Columbia, this 18th day of January, A. D. 1920.

(Sgd.) F. G. AWALT
*Acting Comptroller of the Currency*

(SEAL.)

ARTICLES OF ASSOCIATION

We the undersigned, the Directors of The City Bank of New York, located in the City and County of New York in the State of New York, having been authorized by the owners of two-thirds of the Capital Stock of said Bank to change and convert the said Bank into a National Bank to change and convert the said Bank into a National Banking Association, under and according to the provisions of the Act of Congress entitled "An Act to provide a National Currency secured by a pledge of United States Bonds and to provide for the circulation and redemption thereof," approved June 3, 1864, and to execute Articles of Association, do hereby in our own behalf and in behalf of the stockholders whom we represent, make and execute the following Articles of Association:

FIRST. The name and title of the Association into which the said The City Bank of New York is to be changed and converted shall be The National City Bank of New York.

SECOND. (As Amended June 29, 1929.) The place where its banking houses and offices shall be located and its operations of discount and deposit carried on, and its general business conducted, shall be in the City of New York, State of New York, its Head Office being at No. 55 Wall Street, in the Borough of Manhattan, City and County of New York, with branches at the following locations:

BOROUGH OF MANHATTAN

17 East 42nd Street
250 Fifth Avenue
330 Bowery

BOROUGH OF BROOKLYN

181–183 Montague Street
556 Nostrand Avenue
418 Myrtle Avenue
1455 Myrtle Avenue
1501 Kings Highway
138 Pennsylvania Avenue
6319–6321 Eighteenth Avenue
5324 Fifth Avenue
230 Flatbush Avenue
885 Flatbush Avenue
8500 Fourth Avenue

The Board of Directors shall have power to change the location of the said Head Office and to discontinue or change the location of any of the said domestic branches, from time to time, in any manner not inconsistent with law, without action by the shareholders provided that none of said branches shall be removed to any place beyond the limits of the City of New York.

THIRD. (As Amended June 29, 1929.) The Board of Directors shall consist of not less than seven nor more than twenty-nine shareholders.

The Regular Annual Meeting for the election of Directors and the transaction of whatever other busi-

ness may be brought before said meeting shall be held on the second Tuesday of January of each year, but if no election shall be held on that day, it may be held on any other day, according to the provisions of the Tenth Section of the Act; and all elections shall be held according to such regulations as may be prescribed by the Board of Directors of the Association, not inconsistent with the provisions of the aforesaid Act.

FOURTH. (As amended June 29, 1929.) The capital stock of this Association shall be $110,000,000, to be divided into 5,500,000 shares of $20 each.

FIFTH. The Board of Directors (a majority of whom shall be a quorum to do business) shall elect one of their number to be President of this Association who shall hold his office (unless he shall become disqualified or be sooner removed by a two-thirds vote of all the members of the Board) for the term for which he was elected a Director; and they shall have power to elect a Vice-President who shall also be a member of the Board of Directors, and to elect or appoint a Cashier and such other officers and clerks as may be required to transact the business of the Association; to fix the salaries to be paid to them and continue them in office or to dismiss them as, in the opinion of a majority of the Board, the interests of the Association may demand.

They shall also have power to define the duties of the officers and clerks of the Association, to require bonds, from them and to fix the penalty thereof; to regulate the manner in which elections of Directors shall be held, and to appoint judges of the elections; to provide for an increase of the capital of the Asso-

ciation, and to regulate the manner in which such increase shall be made; and generally to do and perform all the acts that it may be legal for a Board of Directors to do under the Act aforesaid; and they shall also have the power to make all By-Laws that it may be proper and convenient for them to make under said Act, for the general regulation of the business of the Association and the entire management and administration of its affairs; which By-Laws may prohibit, if the Directors shall so determine, the transfer of stock owned by any stockholder who may be liable to this Association, either as principal debtor or otherwise, without the consent of the Board.

SIXTH. (As amended Jan. 10, 1928.) This Assotion shall have succession from the date of its organization certificate until such time as it be dissolved by the act of its shareholders owning two-thirds of its stock, or until its franchise becomes forfeited by reason of violation of law, or until terminated by either a general or a special Act of Congress or until its affairs be placed in the hands of a receiver and finally wound up by him.

SEVENTH. These Articles of Association may be changed or amended at any time by stockholders owning a majority of the stock of the Association, in any manner not inconsistent with the provisions of the Act, and the Board of Directors or any three stockholders may call a meeting of the stockholders for this purpose.

IN WITNESS WHEREOF we, the Directors aforesaid, for ouselves as such Directors and in behalf of the

stockholders of The City Bank of New York have hereunto set our hands this fifth day of July, 1865.

MOSES TAYLOR
TARRANT PUTNAM
J. H. BROWER
LOUIS A. VON HOFFMANN
GEORGE GREER
JOHN ALSTYNE
HENRY PARISH
JOHN J. CISCO
JOHN J. PHELPS

UNITED STATES OF AMERICA
STATE OF NEW YORK } *ss.*
CITY AND COUNTY OF NEW YORK

On this fifth day of July in the year of our Lord one thousand eight hundred and sixty five personally came before me a notary public in and for the State of New York, Moses Taylor, Tarrant Putnan, John H. Brower, John J. Cisco, Louis A. von Hoffmann, George Greer, John Alstyne, John J. Phelps, and Henry Parish, directors of The City Bank of New York, to me well known, who severally acknowledged that they executed the foregoing Articles of Association for the purposes therein mentioned.

Witness my hand and seal of Office the day and year aforesaid.

WM. WALTER PHELPS
*Notary Public*
*County of New York*

(SEAL.)

I certify that the Articles of Association of The National City Bank of New York were executed in du-

plicate and that one of the instruments so executed is the foregoing, and that the other in all respects like the foregoing and stamped in the same manner is on file with said bank.

Dated New York, July 5th, 1865.

MOSES TAYLOR
*President*

UNITED STATES OF AMERICA
STATE OF NEW YORK } *ss.*
COUNTY OF NEW YORK

NATHAN C. LENFESTEY, being first duly sworn, deposes and says:

That he is the Cashier of The National City Bank of New York, a National Banking Association, organized and existing under the laws of the United States of America, and having its Head Office at No. 55 Wall Street, Borough of Manhattan, City, County and State of New York;

That, as such cashier, he has charge of the books and accounts of the said Bank;

That the subjoined Condensed Statement of Condition of The National City Bank of New York, including Domestic and Foreign offices, as of December 31, 1929, is true and correct.

(Sgd.) NATHAN C. LENFESTEY

Subscribed and sworn to before me this 28th day of January, 1930.

(Sgd.) CLARA E. VAN EMDEN
*Notary Public, New York County*
*N. Y. Co. Clks. No. 10, Reg. No. 0–53*
*Commission expires March 30, 1930*

STATE OF NEW YORK }
COUNTY OF NEW YORK }

No. 5869, Series C

I, Daniel E. Finn, Clerk of the County of New York, and also Clerk of the Supreme Court for the said county, the same being a Court of Record, having a seal, do hereby certify, that

CLARA E. VAN EMDEN

whose name is subscribed to the deposition or certificate of the proof or acknowledgment of the annexed instrument, and thereon written, was, at the time of taking such deposition, or proof and acknowledgment, a Notary Public in and for such County, duly commissioned and sworn, and authorized by the laws of said State, to take depositions and to administer oaths to be used in any Court of said State and for general purposes; and also to take acknowledgments and proofs of deeds, of conveyances for land, tenements or hereditaments in said State of New York. And further, that I am well acquainted with the handwriting of such Notary Public, and verily believe that the signature to said deposition or certificate of proof or acknowledgment is genuine.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the said Court and County, the 6th day of February, 1930.

(Sgd.) DANIEL E. FINN
*Clerk*

**Exhibit B**

THE GOVERNMENT OF THE PHILIPPINE ISLANDS
DEPARTMENT OF AGRICULTURE AND COMMERCE
BUREAU OF COMMERCE
MERCANTILE REGISTER

TO ALL TO WHOM THESE PRESENTS MAY COME, GREETING:

This is to certify that the annexed is a true and complete transcript of the Order granting permission to "The National City Bank of New York," to establish branches in Manila and Cebu, Philippine Islands, which were duly filed with the Mercantile Register of the Bureau of Commerce on the 19th day of March, *Anno Domini* nineteen hundred and thirty.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the seal of the said Register to be affixed, at Manila, this 26th day of August, *Anno Domini* nineteen hundred and thirty-three.

(Sgd.) TOMAS CONFESOR
*Director*

(SEAL.)

UNITED STATES OF AMERICA
STATE OF NEW YORK } *ss.*
COUNTY OF NEW YORK

I, Clara E. van Emden, a notary public in and for the County of New York, State of New York, United States of America, do hereby certify that I have compared the copies attached hereto with the original copy

of an Order issued by the Federal Reserve Board, Washington, D. C., under date of January 23, 1930, and the original authentication attached thereto by the Department of State, Washington, D. C., under date of January 24, 1930, and that the same are true and exact copies thereof. I further certify that the original of the said Order and the authentication by the Department of State are on file with the Cashier of The National City Bank of New York, at its head office, No. 55 Wall Street, Borough of Manhattan, City, County and State of New York.

Given under my hand and official seal this 28th day of January, 1930.

(Sgd.) CLARA E. VAN EMDEN
*Notary Public, New York County*
*N. Y. Co. Clks. No. 10, Reg. 0*
*Commission expires March 30, 1930*

(SEAL.)

STATE OF NEW YORK }
COUNTY OF NEW YORK } *ss.*

No. 5875, Series C

I, Daniel E. Finn, Clerk of the County of New York, and also Clerk of the Supreme Court for the said County, the same being a Court of Record, having a seal, do hereby certify, that

CLARA E. VAN EMDEN

whose name is subscribed to the deposition or certificate of the proof or acknowledgment of the annexed instrument, and thereon written, was, at the time of taking such deposition, or proof and acknowledgment,

a notary public in and for such County, duly commissioned and sworn, and authorized by the laws of said State, to take depositions and to administer oaths to be used in any Court of said State and for general purposes; and also to take acknowledgments and proofs of deeds, of conveyances for land, tenements or hereditaments in said State of New York. And further, that I am well acquainted with the handwriting of such Notary Public, and verily believe that the signature to said deposition or certificate of proof or acknowledgment is genuine.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the said Court and County, the 6 day of Feb., 1930.

(Sgd.) DANIEL E. FINN
*Clerk*

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No. 474

UNITED STATES OF AMERICA

(THE GREAT SEAL OF THE UNITED STATES)

DEPARTMENT OF STATE

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETING:

I CERTIFY that the document hereunto annexed is under the Seal of the Federal Reserve Board.

IN TESTIMONY WHEREOF, I, Henry L. Stimson, Secretary of State, have hereunto caused the Seal of the Department of State to be affixed and my name subscribed by the Chief Clerk of the said Department, at

the City of Washington, in the District of Columbia, this twenty-fourth day of January, 1930.

(Sgd.) HENRY L. STIMSON
*Secretary of State*

By E. JAYERS
*Chief Clerk*

(Department of State Official Seal.)

Present:

Hon. R. A. Young, Governor,
Hon. Chas. S. Hamlin,
Hon. A. C. Miller,
Hon. E. H. Cunningham,
Hon. J. W. Pole,
Mr. E. M. McCleland, Asst. Secretary

At a stated meeting of the Federal Reserve Board, held at its office in the City of Washington, District of Columbia, on January 23, 1930.

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IN THE MATTER OF THE APPLICATION OF THE NATIONAL CITY BANK OF NEW YORK for permission to establish Branches in Manila and Cebu, each in the Philippine Islands.

ORDER GRANTING PERMISSION TO ESTABLISH BRANCHES IN MANILA AND CEBU, PHILIPPINE ISLANDS

The National City Bank of New York, having on or about January 3, 1930, filed an application with this Board for the purpose of obtaining authority to establish branches in Manila and Cebu, Philippine Islands, and the said Application having been considered; and it appearing that the said Application is properly

made under the laws of the United States of America and should be granted, Now,

"Ordered, that the said application be and it hereby is approved, and that the said Bank be and it hereby is authorized to establish Branches in Manila and Cebu, Philippine Islands.

THE FEDERAL RESERVE BOARD:

(Sgd.) R. A. YOUNG
*Governor*

Attest:

E. M. MCCLELAND
*Assistant Secretary*

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**Exhibit C**

THE GOVERNMENT OF THE PHILIPPINE ISLANDS
DEPARTMENT OF AGRICULTURE AND COMMERCE
BUREAU OF COMMERCE
MERCANTILE REGISTER

---

TO ALL TO WHOM THESE PRESENTS MAY COME, GREETING:

THIS IS TO CERTIFY that the annexed is a true and complete transcript of the By-Laws of The National City Bank of New York which were duly filed with the Mercantile Register of the Bureau of Commerce on the 19th day of March, *Anno Domini* nineteen hundred and thirty.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the seal of the said Register to be

affixed at Manila, this nineteenth day of July, *Anno Domini* nineteen hundred and thirty-three.

(Sgd.) TOMAS CONFESOR
*Director*

(SEAL.)

## THE NATIONAL CITY BANK OF NEW YORK

## BY-LAWS

### ARTICLE I

### MEETINGS OF SHAREHOLDERS

SECTION 1. *Annual meeting.*—The regular annual meeting of the shareholders, for the election of directors and the transaction of such other business as may come before the meeting, shall be held at the Head Office of the Association, No. 55 Wall Street, Borough of Manhattan, City of New York, at 12 o'clock noon, on the second Tuesday in January in each year. Notice of such meeting shall be mailed, postage prepaid, at least thirty days prior to the date thereof, addressed to each shareholder at his address appearing on the books of the Association; but any failure to mail such notice, or any irregularity therein, shall not affect the validity of such meeting or of any of the proceedings thereat. If, from any cause, an election of directors is not made on the said day, the Board of Directors shall order the election to be held on some subsequent day, as soon thereafter as practicable; and notice thereof shall be given in the manner herein provided for the annual meeting, and, in addition thereto, thirty days' prior notice thereof shall be given by publication in a newspaper published in the City and County of New York.

SEC. 2. *Special meetings.*—The Cashier shall call a special meeting of the shareholders, at any time, upon the order of the Board of Directors or of the President or other officer for the time being acting as President; and he shall also call a special meeting whenever requested in writing by the registered holders of not less than forty per cent of the outstanding capital stock. Unless otherwise required by law, notice of any such special meeting shall be sufficiently given, if mailed, postage prepaid, not less than ten days before the meeting, to each shareholder at his address appearing on the books of the Association.

SEC. 3. *Judges of election.*—Every election of directors shall be managed by three judges, who shall be appointed from among the shareholders by the Board of Directors. The judges of election shall hold and conduct the election at which they are appointed to serve; and, after the election, they shall file with the Cashier a certificate under their hands, certifying the result thereof and the names of the directors elected.

SEC. 4. *Quorum.*—A majority of the outstanding capital stock, represented in person or by proxy, shall constitute a quorum at any meeting of shareholders, unless otherwise provided by law; but less than a quorum may adjourn any meeting, from time to time, and the meeting may be held, as adjourned, without further notice. A majority of the votes cast shall decide every question or matter submitted to the shareholders at any meeting, unless otherwise provided by law.

## ARTICLE II

### DIRECTORS

SECTION 1. *Number.*—All corporate powers shall be vested in and exercised by a Board of Directors com-

posed of not less than seven nor more than twenty-nine members; and the number of Directors to be elected each year at the Annual Meeting of shareholders shall be determined by vote of the shareholders at such meeting.

SEC. 2. *Organization meeting.*—The Cashier, upon receiving the certificate of the judges, of the result of any election, shall notify the directors-elect of their election and of the time at which they are required to meet at the Head Office of the Association for the purpose of organizing the new Board and electing and appointing officers of the Association for the succeeding year. Such meeting shall be appointed to be held on the day of the election or as soon thereafter as practicable, and, in any event, within thirty days thereof. If, at the time fixed for such meeting, there shall not be a quorum present, the directors present may adjourn the meeting, from time to time, until a quorum is obtained.

SEC. 3. *Regular meetings.*—The Board of Directors shall hold a regular meeting, without notice, on Tuesday in each week, at 1.30 o'clock p. m., at the Head Office of the Association. Should the day appointed for a regular meeting fall on a legal holiday, the meeting shall be held at the same time on the next day not a legal holiday or on such other day as the Board may have ordered at the next previous meeting.

SEC. 4. *Special meeting.*—A special meeting of the Board of Directors may be called at any time by the Chairman or the President; and such meeting shall be called by either of said officers, or by the Cashier, on the written request of any three members of the Board. Notice of any special meeting may be given in writing, either by mailing or telegraphing the same

to each director, at his address appearing on the books of the Association on or before the second day preceding the meeting, or by delivering the same to him personally on or before the day preceding the meeting or by leaving the same at his place of business in the City of New York, before 5 o'clock, p. m., or at his residence in the said city before 9 o'clock, p. m., on the day preceding the meeting; provided, that if any director has neither a place of business nor a residence in the City of New York, such notice may be sent by telegraph at any time during the day preceding the meeting, to his address appearing on the books of the Association.

SEC. 5. *Quorum.*—A majority of the directors shall constitute a quorum at any meeting, except when otherwise provided by law; but a less number may adjourn any meeting, from time to time, and the meeting may be held, as adjourned, without further notice.

SEC. 6. *Vacancies.*—When any vacancy occurs among the directors, the remaining members of the Board may appoint a director to fill such vacancy at any regular meeting of the Board, or at a special meeting called for that purpose.

SEC. 7. *Directors' fees.*—A fee of $50 shall be paid to each Director for attendance at any meeting of the Board of Directors or of any Committee of said Board.

## ARTICLE III

### COMMITTEES OF THE BOARD

SECTION 1. *Executive Committee; Powers.*—There shall be an Executive Committee of the Board of Directors, to be appointed by the Board of Directors from time to time, and to hold office during its pleas-

ure. The Executive Committee shall have and may exercise, when the Board of Directors is not in session, all the powers of the Board that may lawfully be delegated. The Executive Committee may make rules for holding and conducting its meetings, and shall keep minutes thereof. Such minutes shall be submitted at the next regular meeting of the Board of Directors, and any action taken by the Board with respect thereto shall be entered in the minutes of the Board. All acts done and powers conferred by the Committee from time to time shall be deemed to be, and may be certified as being, done or conferred under authority of the Board.

SEC. 2. *Executive Committee; Membership.*—The Executive Committee shall be composed of five permanent members, who shall be the Chairman and the President, both ex officio, and three other members appointed by the Board, and of four additional members who shall be designated by the Chairman from time to time from among the other Directors in rotation as herein provided. Such additional members shall serve for terms of twelve weeks each, or until the earlier expiration of their respective terms as Directors, except that the four additional members first designated in any year shall serve for terms of three, six, nine and twelve weeks, respectively. The Chairman, or, in his absence, the President, shall have power to designate another Director to serve during the absence of any permanent or additional member of the Committee, and for that purpose, and also for the purpose of maintaining continuity between an outgoing and an incoming committee, or for other reason deemed by him sufficient, to vary the regular order of rotation.

Three members of the Committee shall constitute a quorum at any meeting.

SEC. 3. *Examining Committee.*—There shall be an Examining Committee composed of not less than five members of the Board of Directors, to be appointed by the Board every six months, or oftener in its discretion, and to hold office during its pleasure. It shall be the duty of the Examining Committee to examine into the affairs of the Association, and to compare its assets and liabilities with the balances of the general ledger, for the purpose of ascertaining whether or not the books are correctly kept and the actual condition of the Association corresponds therewith, and whether or not the Association is in a sound and solvent condition; and the result of any such examination shall be reported to the Board of Directors and spread on the minutes at the next regular meeting of the Board thereafter.

SEC. 4. *Other committees.*—The Board of Directors may appoint, from time to time, from its own members, other committees of one or more persons, for such purposes and with such powers as the Board may determine.

## ARTICLE IV

### OFFICERS AND AGENTS

SECTION 1. *Officers.*—The officers of the Association to be elected or appointed by the Board of Directors shall be a Chairman and a President, each of whom shall be a Director, one or more Senior Vice-Presidents, one or more Vice-Presidents, a cashier, a comptroller, one or more Assistant Vice-Presidents, one or more Trust Officers, one or more Executive Assistants, one

or more Assistant Comptrollers, Assistant Trust Officers and Assistant Cashiers, one or more Managers and Assistant Managers of Domestic Branches and Offices, one or more Managers, Sub-Managers and Agents in charge of, and one or more Supervisors and Assistant Supervisors of, Foreign Branches, and such other officers and attorney-in-fact as from time to time may appear to the Board of Directors to be required or desirable for the conduct of the affairs of the Association.

SEC. 2. *Clerks and agents.*—The Board of Directors may appoint, from time to time, such Paying Tellers, Receiving Tellers, Note Tellers, Bookkeepers and other clerks, agents and employees as it may deem advisable for the prompt and orderly transaction of the business of the Association and may prescribe the duties of each, subject to the provisions of these By-Laws; and it may delegate to the President, or to any other officer of the Association, authority to appoint and dismiss such clerks, agents and employees and to prescribe their duties.

SEC. 3. *Term of office.*—The Chairman and the President shall each hold office (unless he shall become disqualified or be sooner removed by a two-thirds vote of all the members of the Board) for the term for which he was elected a director. All other officers, clerks, agents and employees elected or appointed by the Board of Directors, or under its authority, shall hold office at the pleasure of the Board.

SEC. 4. *Powers and duties of Chairman.*—Except as otherwise provided by law, the Chairman shall be the chief executive officer of the Association and shall have and may exercise any and all powers and perform any and all duties pertaining to the office of President,

or conferred or imposed upon the President under these By-Laws. He shall be ex officio Chairman of the Board of Directors and of the Executive Committee and shall preside at all meetings of the Board of said Committee. He shall have such other powers and duties as may from time to time be assigned to him by the Board of Directors or by said Committee.

SEC. 5. *Powers and duties of President.*—In the absence or disability of the Chairman, the President shall have the powers and perform the duties of the Chairman. He shall also have and may exercise any and all powers and perform any and all duties pertaining to the office of President, or conferred or imposed upon the President by these By-Laws or by statute. He shall have such other powers and duties as may from time to time be assigned to him by the Board of Directors or the Executive Committee or the Chairman. He shall be a member of the Executive Committee ex officio.

SEC. 6. *Powers and duties of Senior Vice-Presidents.*—Each of the Senior Vice-Presidents shall, in the absence of the President, have full authority to exercise all the powers and perform all the duties of the President.

SEC. 7. *Powers and duties of the Cashier.*—The Cashier shall be the Secretary of the Board of Directors, shall keep accurate minutes of all meetings of the shareholders and of the Board, and shall attend to the giving of all notices required by these By-Laws to be given, except as herein otherwise provided. He shall be responsible for all moneys, funds and valuables of the Association, and shall be the custodian of the corporate seal, records, documents and papers of the Association, unless otherwise provided by these By-

Laws or by the Board of Directors. It shall be his duty to provide for the keeping of proper records of all transactions of the Association; to report to the Board of Directors at each regular meeting the condition of the Association as shown by the daily statement at the close of business on the preceding day; to submit to the Board of Directors or the Executive Committee, when requested, a detailed statement of the expenses of the Association; and to perform such other duties as may be assigned to him, from time to time, by the Board of Directors or the Executive Committee. He shall maintain strict discipline and observe carefully the conduct of all persons employed under him, and report to the President promptly such evidence of incapacity or bad conduct as he may observe.

SEC. 8. *Powers and duties of other officers.*—All other officers shall respectively exercise such powers and perform such duties as pertain to their several offices and as the Board of Directors shall, from time to time, prescribe.

## ARTICLE V

### DOMESTIC BRANCHES AND OFFICES

SECTION 1. *Location.*—The Board of Directors shall have power to discontinue or to change the location of any domestic branch or office, from time to time, in any manner not inconsistent with law, without action by the shareholders.

SEC. 2. *Management.*—The affairs of such domestic branches and offices shall be under the immediate supervision and control of the President; and the President is authorized, with the approval of the Board of Directors or Executive Committee, to designate such

Vice-Presidents, Assistant Vice-Presidents, Assistant Cashiers, Managers, Assistant Managers, Trust Officers, Assistant Trust Officers, and such other officers as he may deem necessary, to conduct the business of such branches and other offices, subject to such rules and regulations as the President shall promulgate from time to time. With like approval of the Board of Directors or the Executive Committee, the President may also cause such powers of attorney to be given to such persons as he may deem necessary for the proper conduct of the business of the said several domestic branches and offices; and he may at any time revoke any powers of attorney so given.

SEC. 3. *Advisory Committees.*—The Board of Directors may appoint an Advisory Committee for any domestic branch or office of the Association, the members of which need not be directors, officers or stockholders, and shall hold office subject to the pleasure of the Board. Any such Committee shall act in an advisory capacity with respect to the branch or office for which it shall have been appointed, subject to such regulations as may from time to time be prescribed by the Board of Directors. The members of any such Advisory Committee shall receive such fees for attendance at meetings thereof as may be prescribed by the Board of Directors.

## ARTICLE VI

### FOREIGN BRANCHES

SECTION 1. *Establishment.*—The Board of Directors is authorized to establish branches in foreign countries and in dependencies of the United States of America, subject to the approval of the Federal Reserve Board.

SEC. 2. *Management.*—The affairs of such foreign branches shall be under the immediate supervision and control of the President; and the President is authorized, with the approval of the Board of Directors or Executive Committee, to designate such Vice-Presidents, Assistant Vice-Presidents, Assistant Cashiers, Supervisors, Assistant Supervisors, Managers, Sub-Managers, Trust Officers, Assistant Trust Officers, and such other officers or agents as he may deem necessary, to conduct the business of such foreign branches, subject to such rules and regulations as the President shall promulgate from time to time. With like approval of the Board of Directors or the Executive Committee, the President may also cause such powers of attorney to be given to such persons as he may deem necessary for the proper conduct of the business of the said several foreign branches; and he may at any time revoke any powers of attorney so given.

SEC. 3. *Custody of funds.*—The funds of each branch shall be kept in the custody of the officer, manager, or other agent in charge thereof, or in such depositories as he may select, subject to the approval of the President or such other officer as he may designate.

SEC. 4. *Books and reports.*—At each branch, the officer, manager or other agent in charge thereof shall keep or cause to be kept, full and regular books of account, which shall at all times be open to inspection by the Association, through its proper officers or accountants or by the proper officers of the Government of the United States of America. All the transactions of the Association at the several branches shall be reported promptly to the Association by the officer, manager or other agent in charge thereof.

## ARTICLE VII

### TRUST DEPARTMENT

SECTION 1. *Exercise of fiduciary powers.*—All fiduciary powers of the Association shall be exercised through the Trust Department, subject to such regulations as the Federal Reserve Board shall from time to time establish. All the books and records of the Trust Department shall be kept separate and distinct from the other books and records of the Association.

SEC. 2. *Officer in charge.*—The Board of Directors shall appoint a Vice-President who shall have charge of all the operations of the Trust Department. He shall make weekly reports in writing to the Executive Committee of all important transactions of the Trust Department and especially of all sales and purchases of investment securities for trust estates.

SEC. 3. *Trust Officers.*—The Board of Directors may appoint, from time to time, one or more Trust Officers and one or more Assistant Trust Officers, who shall exercise such powers and perform such duties as are prescribed in these By-Laws or as may be assigned to them by the Board of Directors or by the President or by the Vice-President in charge of the Trust Department.

SEC. 4. *Execution of instruments.*—All agreements, indentures, mortgages, deeds, conveyances, transfers, certificates, declarations, receipts, discharges, satisfactions, settlements, petitions, schedules, accounts, affidavits, bonds, undertakings, proxies and other instruments or documents in connection with the exercise of any of the fiduciary powers of the Association,

may be signed, executed, acknowledged, verified, delivered or accepted in behalf of the Association by the President or any Vice-President, or any Trust Officer, and the seal of the Association may be affixed thereto and attested by the Cashier or any Assistant Cashier.

SEC. 5. *Authentication and signature of instruments.*—All authentications or certificates by the Association, as Trustee under any mortgage, deed of trust or other instrument securing bonds, debentures, notes, or other obligations of any corporation and all certificates as Register or Transfer Agent and all certificates of deposit for stocks and bonds, and interim certificates and trust certificates, may be signed or countersigned in behalf of the Association by the President or any Vice-President or Assistant Vice-President, or by the Cashier or any Assistant Cashier, or by any Trust Officer or any Assistant Trust Officer, or by any other person appointed by the Board of Directors.

SEC. 6. *Securities and investments.*—The securities and investments held in each trust shall be kept separate and distinct from the securities owned by the Association, and separate and distinct from those of any other trust. Trust securities and investments shall be held in the custody of two or more officers or other employees designated by the Board of Directors from time to time.

SEC. 7. *Trust Committee.*—There shall be Trust Committee composed of not less than three members of the Board of Directors appointed by the Board to serve during its pleasure. The Trust Committee shall review periodically all investments of trust funds held by the Trust Department, and shall approve the classes

of securities in which trust funds, held under discretionary powers of investment, may be invested. The Trust Committee shall have such other powers and duties with respect to the investment of trust funds as may be conferred upon it by the Board of Directors. It shall meet at least once a month, and its members shall be entitled to receive for attendance at any meeting such fee or compensation as may be fixed by the Board of Directors or Executive Committee.

## ARTICLE VIII

### STOCK AND STOCK CERTIFICATES

SECTION 1. *Transfers.*—Shares of stock shall be transferable on the books of the Association, and a transfer book shall be kept in which all transfers of stock shall be recorded. Every person becoming a shareholder by such transfer shall, in proportion to his shares, succeed to all rights and liabilities of the prior holder of such shares. No stock shall be voted at any election which shall have been transferred within fifteen days prior to such election.

SEC. 2. *Stock certificates.*—Certificates of stock shall bear the engraved signature of the Chairman or of the President, and shall be signed by the Cashier or any Assistant Cashier, and countersigned by any officer appointed by the Board of Directors or the Executive Committee for that purpose, to be known as an Authorized Officer, and the seal of the Association shall be engraved thereon. Each certificate shall recite on its face that the stock represented thereby is transferable only upon the books of the Association by the holder thereof or his attorney, upon surrender of the certificate.

## ARTICLE IX

### CORPORATE SEAL

The Cashier or any Assistant Cashier shall have authority to affix the corporate seal to any documents requiring such seal, and to attest the same. Such seal shall be substantially in the following form: 'The National City Bank of New York.'

## ARTICLE X

### MISCELLANEOUS PROVISIONS

SECTION 1. *Fiscal year.*—The fiscal year of the Association shall be the calendar year.

SEC. 2. *Conveyances of real estate.*—All transfers and conveyances of real estate made by the Association in its own right, shall be executed on behalf of the Association, upon the direction of the Board of Directors or the Executive Committee, by the President or a Senior Vice-President, or a Vice-President, under the seal of the Association, attested by the Cashier, or an Assistant Cashier. Such transfers and conveyances may also be executed in such other manner and by such other officers as the Board of Directors or Executive Committee shall from time to time direct.

SEC. 3. *Records.*—The Articles of Association, the By-Laws and the proceedings of all meetings of the shareholders, the Board of Directors, the Executive Committee, and any other standing committee of the Board, shall be recorded in appropriate minute books provided for the purpose. The minutes of each meeting shall be signed by the Cashier or other officer appointed to act as Secretary of the meeting.

SEC. 4. *Banking hours.*—The Head Office of the Association shall be open for business from 10 o'clock,

a. m., to 3 o'clock, p. m., on each day of the year, excepting Sundays and such days or parts of days as may be recognized by the laws of the State of New York as legal holidays.

## ARTICLE XI

### BY-LAWS

SECTION 1. *Inspection.*—A copy of the By-Laws, with all amendments thereto, shall at all times be kept in a convenient place at the Head Office of the Association, and shall be open for inspection to all shareholders, during banking hours.

SEC. 2. *Amendments.*—These By-Laws may be amended, altered or repealed, at any regular meeting of the Board of Directors, by a vote of a majority of the whole number of the Directors.

* * *

I, Nathan C. Lenfestey, certify, that the foregoing is a true and correct copy of the By-Laws of The National City Bank of New York, and all of them as heretofore duly promulgated and now effective, and in testimony thereof I have hereunto affixed my official signature and the seal of the said Bank in the City of New York, on this 28th day of Jan., 1930.

(Sgd.) N. C. LENFESTEY
*Cashier of The National City Bank of New York and Secretary of its Board of Directors*

UNITED STATES OF AMERICA
STATE OF NEW YORK } *ss.*
COUNTY OF NEW YORK

On this 28th day of January, 1930, before me, a Notary Public in and for the County of New York,

State of New York, United States of America, and the undersigned witnesses, appeared Nathan C. Lenfestey, domiciled in Summit, New Jersey, to me known and known to me to be the Cashier of The National City Bank of New York and Secretary of its Board of Directors, all of which I attest. Said Nathan C. Lenfestey signed in our presence the foregoing certificate, after declaring on oath that he had compared the foregoing By-Laws with the original thereof, of which I attest he is the custodian, and that the seal affixed to said certificate is such corporate seal and that he is duly authorized to affix same to said certificate.

(Sgd.) CLARA E. VAN EMDEN
*Notary Public New York County*
*N. Y. Co. Clks. No. 10, Reg. No. 0–53*
*Commission expires March 30, 1930*

Witnesses:

(Sgd.) E. M. HEUER
M. D. MAHON

STATE OF NEW YORK }
COUNTY OF NEW YORK } *ss.*

No. 5866, Series C

I, Daniel E. Finn, Clerk of the County of New York and also Clerk of the Supreme Court for the said County the same being a Court of Record, having a seal, do hereby certify, that

CLARA E. VAN EMDEN

whose name is subscribed to the deposition or certificate of the proof or acknowledgment of the annexed instrument, and thereon written was, at the time of taking such deposition, or proof and acknowledgment,

a Notary Public in and for such County, duly commissioned and sworn, and authorized by the laws of said State, to take depositions and to administer oaths to be used in any Court of said State and for general purposes; and also to take acknowledgments and proofs of deeds, of conveyances for land, tenements or hereditaments in said State of New York. And further, that I am well acquainted with the handwriting of such Notary Public, and verily believe that the signature to said deposition or certificate of proof or acknowledgment is genuine.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the said Court and County, the 6th day of February, 1930.

(Sgd.) DANIEL E. FINN
*Clerk*

(SEAL.)

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**Exhibit D**

(Here appears the picture of the building where the offices of the National City Bank of New York in New York are located.)

55 WALL STREET

CONDENSED STATEMENT OF CONDITION, JUNE 30, 1931
THE NATIONAL CITY BANK OF NEW YORK
INCLUDING DOMESTIC AND FOREIGN OFFICES

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(SEAL)

CONDENSED STATEMENT OF CONDITION, JUNE 30, 1931

DIRECTORS

HUGH B. BAKER, President, The National City Company
SOSTHENES BEHN, Chairman, International Telephone & Telegraph Corporation
CURTIS E. CALDER, President, American & Foreign Power Company, Inc.

FLOYD L. CARLISLE, Chairman of the Board, Niagara Hudson Power Corporation
GUY CARY, of Messrs. Shearman and Sterling
EDWARD A. DEEDS, 52 Wall Street
CLEVELAND E. DODGE, Vice-President, The Phelps, Dodge Corporation
FRED J. FISHER, Vice-President and Director, General Motors Corporation
PHILIP A. S. FRANKLIN, President, International Mercantile Marine Company
JOHN A. GARVER, of Messrs. Shearman and Sterling
JOSEPH P. GRACE, Chairman of the Board, W. R. Grace and Company
GERRISH H. MILLIKEN, President, Deering, Milliken and Company, Inc.
CHARLES E. MITCHELL, Chairman
JAMES H. PERKINS, President, City Bank Farmers Trust Company
JAMES H. POST, President, The National Sugar Refining Co.
GORDON S. RENTSCHLER, President
PERCY A. ROCKEFELLERS, 25 Broadway
JOHN D. RYAN, Chairman of the Board, Anaconda Copper Mining Co.
WILLIAM A. SIMONSON, Senior Vice-President
SAMUEL SLOAN, 22 William Street
JAMES A. STILLMAN, 17 East 49th Street
ERIC P. SWENSON, of S. M. Swenson and Sons
GERARD SWOPE, President, General Electric Company
BEEKMAN WINTHROP, of Robert Winthrop and Company

## THE NATIONAL CITY BANK OF NEW YORK

Chairman: CHARLES E. MITCHELL
President: GORDON S. RENTSCHLER
Senior Vice-President: WILLIAM A. SIMONSON
Vice-President and Manager Overseas Division: JOSEPH H. DURRELL

VICE-PRESIDENTS

EDWARD F. BARRETT
WM. GAGE BRADY, Jr.
GEORGE D. BUCKLEY
GORDON J. CAMPBELL

VICE-PRESIDENTS—continued

HERMAN J. COOK
JOSEPH T. COSBY
DEWITT A. FORWARD
GEORGE W. FRAKER
JAMES L. HARRISON
BOIES C. HART
HARRY E. HENNEMAN
WILLIAM W. HOFFMAN
HORACE F. HOWLAND
ALLEN G. HOYT
JAMES A. JACKSON
WILLIAM S. LAMBIE
WILLIAM J. NOONAN
JAMES B. PIKE
THOMAS E. REYNOLDS
GEORGE E. ROBERTS
HOWARD C. SHEPERD
DOUGLASS B. SIMONSON
ROGER STEFFAN
JACOB WOHNSIEDLER

COMPTROLLER

DANIEL C. BORDEN

VICE-PRESIDENT AND EXECUTIVE ASSISTANT

LEE E. OLWELL

Cashier: NATHAN C. LENFESTEY

ASSISTANT VICE-PRESIDENTS

CHARLES T. AYLES
KENNETH W. BANTA
JAMES B. BIRMINGHAM
DONALD McK. BLODGET
CHARLES D. BOWSER
HUGH BOOKS
FARRIS CAMPBELL
THOMAS J. CONNELLAN
JOHN L. CURTIS
CHASE L. DAY
A. VICTOR EDWARDS
CHARLES W. FERRIS
ROBERT FORGAN
JAMES M. FRASER
DANIEL A. FREEMAN, Jr.
WILLIAM N. FULKERSON
CHARLES C. HILLIARD
WALTER J. HOFFMAN
F. JOSEPH HOLLERAN
VINCENT DE P. JAMME
HENRY A. KOELSCH, Jr.
GEORGE A. KURZ
BURNESS KYDD
HILARY W. LUCKE
REGINALD H. MARLOW
JAMES C. MARTINE
HOBART M. McPHERSON
IRVING H. MEEHAN
WILLIAM T. MORAN
WILLIAM R. MORRISON
LOUIS NAETZKER
D. JOSEPH PALMER
WILLIAM G. F. PRICE
EDWARD F. REGAN
LEO N. SHAW
CHARLES V. SHEEHAN
ARTHUR C. SHOREY
ROBERT E. SHOTWELL
WILBERT WARD
PERCY WEST
HORACE O. WESTMEN
GEORGE WHITLOCK
MURRAY S. WILSON
JOHN F. YOUNG

## ASSISTANT COMPTROLLERS

WALTER BROWN
ROWLAND R. HUGHES
JAMES A. MACKAY
FRANK E. RASMUSSEN

## ASSISTANT CASHIERS

HALSEY G. BECHTEL
ARTHUR V. BENNETT
ERNEST C. BOGERT
ERNEST L. BRIGHAM
WALTER J. BROTHERTON
EVERETT W. BROWN
ARTHUR C. CHADBOURNE
ABRAM V. HAVENS
HAROLD R. HAYES
EDWARD P. HOFFMAN
JOHN L. HOGEBOOM
HAROLD H. HOLLINGSHEAD
GUY HOLMAN
JOHN H. HOVERMAN
ALFRED MULLEN
FRANCIS W. MYERS
WILLIAM A. NEEREAMER
GEORGE F. NOLTE
HAROLD W. OSTERHOUT
EDWARD L. PIERCE
THOMAS A. RAVE
LEWIS S. CLAPP
CHARLES H. CLARK
DUDLEY DILLON
DUNCAN DUNBAR
HAROLD A. DWYER
MARCUS H. ELLIOTT
RICHARD W. FOOTE
REGINALD G. FRANCKLYN
GEORGE GRISWOLD
GEORGE A. GUERDAN
HARRY D. HALL
HARRY W. JONES
PERRY W. JONES
MATHEW J. KELSH
GEO. A. KING, Jr.
J. EVERETT KOOP
F. WALDO LATSON
JAMES B. LITTLE
ROBERT H. MATSON
GEOFFREY C. MAY
WARD MILLER
JAMES J. MULHEARN
GEORGE F. ROBERTSON
JAMES S. ROCKEFELLER
LEO. J. SCHOENHOFF
VICTOR F. SCHROETER
JOHN E. SHEA
WILLIAM J. SIEMON
WALTER G. SPEER
WM. F. SWITZLER
FREDERICK A. TURCOTTE
JAMES WALLACE
FREDERICK C. WINDISCH

## STATISTICIAN

GEORGE B. ROBERTS

## ASSISTANT STATISTICIAN

ALAN H. TEMPLE

# THE NATIONAL CITY BANK OF NEW YORK

Including Domestic and Foreign Offices

## CONDENSED STATEMENT OF CONDITION AS OF JUNE 30, 1931

| ASSETS | | | LIABILITIES | | |
|---|---|---|---|---|---|
| Cash in Vault and in Federal Reserve Bank | $161,133,434.74 | | Capital | $110,000,000.00 | |
| Due from Banks and Bankers | 182,415,687.02 | | Surplus | 90,000,000.00 | |
| | | $343,549,121.76 | Undivided Profits | 25,769,139.11 | $225,769,139.11 |
| Loans, Discounts and Bankers' Acceptances | | 1,003,815,601.27 | Reserve for: | | |
| United States Government Bonds and Certificates | $223,030,410.83 | | Contingencies | $7,313,906.96 | |
| State and Municipal Bonds | 6,216,038.17 | | Accrued Interest, Discount and other Unearned Income | 3,771,573.78 | |

## THE NATIONAL CITY BANK OF NEW YORK—Continued

### CONDENSED STATEMENT OF CONDITION AS OF JUNE 30, 1931—Continued

| ASSETS | | | LIABILITIES | | |
|---|---|---|---|---|---|
| Stock in Federal Reserve Bank | $6,600,000.00 | | Taxes, Dividends and Accrued Expenses, et cetera | $9,157,936.01 | |
| Other Bonds and Securities | 122,557,108.35 | | | | $20,243,416.75 |
| | | $358,403,557.35 | Liability as Acceptor, Endorser or Maker on Acceptances and Foreign Bills | | 226,571,009.67 |
| Ownership of International Banking Corporation | | 8,000,000.00 | Deposits | | 1,460,557,029.53 |
| Bank Buildings | | 55,612,010.35 | | | |
| Items in Transit with Branches | | 21,773,839.24 | | | |
| Customers' Liability Account of Acceptances | | 174,920,242.85 | | | |
| Other Assets | | 7,066,222.24 | | | |
| Total | | $1,973,140,595.06 | Total | | $1,973,140,595.06 |

FIGURES OF FOREIGN OFFICES WHICH ARE INCLUDED HEREIN ARE AS OF JUNE 25, 1931

## THE NATIONAL CITY BANK OF NEW YORK
Head Office: 55 Wall Street, New York

### FOREIGN BRANCHES

ARGENTINA:
- Buenos Aires
- *Sub-branches*
- Plaza Once
- Retiro
- Rosario

BELGIUM:
- Antwerp
- Brussels

BRAZIL:
- Rio de Janeiro
- Pernambuco
- Santos
- Sao Paulo

CHILE:
- Santiago
- Valparaiso

CHINA:
- Canton
- Hankow
- Hongkong
- Peiping
- Shanghai
- Tientsin

COLOMBIA:
- Bogota
- Cali
- Medellin

CUBA:
- Havana
- *Sub-branches*
- Belascoain
- Cuatro Caminos
- Galiano
- La Lonja
- Plaza de la Fraternidad
- Caibarien
- Camaguey
- Cardenas
- Ciego de Avila
- Cienfuegos
- Florida
- Guantanamo
- Holguin
- Manzanillo
- Matanzas
- Moron
- Nuevitas
- Palma Soriano
- Pinar del Rio
- Remedios
- Sagua la Grande
- Sancti Spiritus
- Santa Clara
- Santiago

FOREIGN BRANCHES—continued

DOMINICAN REPUBLIC:
Santo Domingo City
Barahona
La Vega
Puerto Plata
San Pedro de Macoris
Santiago de los Caballeros

ENGLAND:
London
36, Bishopsgate
11, Waterloo Place

INDIA:
Bombay
Calcutta
Rangoon

ITALY:
Milan
Genoa

JAPAN:
Kobe
Osaka
Tokio
Yokohama

MANCHURIA:
Dairen
Harbin
Moukden

MEXICO:
Mexico City

PERU:
Lima

PHILIPPINE ISLANDS:
Manila
Cebu

PUERTO RICO:
San Juan
Arecibo
Bayamon
Caguas
Mayaguez
Ponce
Santurce

REP. OF PANAMA:
Panama
Colon

STRAITS SETTLEMENTS:
Singapore

URUGUAY:
Montevideo

VENEZUELA:
Caracas

## THE NATIONAL CITY BANK OF NEW YORK (FRANCE) S. A.

PARIS

39–41 Boulevard Haussmann 60 Avenue des Champs Elysees

NICE

6 Jardin du Roi Albert 1 er

## INTERNATIONAL BANKING CORPORATION

Head Office: 55 Wall Street, New York

FOREIGN AND DOMESTIC BRANCHES

| UNITED STATES | SPAIN | | ENGLAND |
|---|---|---|---|
| San Francisco | Madrid | Barcelona | London |

and Representatives in the National City Bank Chinese Branches

## BANQUE NATIONALE DE LA REPUBLIQUE D'HAITI

Head Office: Port-au-Prince, Haiti

## THE NATIONAL CITY SAFE DEPOSIT COMPANY

Chairman: CHARLES E. MITCHELL

President: GORDO S. RENTSCHLER

Safe Deposit Facilities are available in the Greater New York Branches of THE NATIONAL CITY BANK OF NEW YORK.

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## THE NATIONAL CITY BANK OF NEW YORK

DOMESTIC BRANCHES

BOROUGH OF MANHATTAN

Bowery at Bond Street
42nd Street at Madison Avenue
Fifth Avenue at 28th Street
57th Street at Seventh Avenue
72nd Street at Broadway
96th Street at Broadway
Park Avenue at 57th Street
Canal Street at Broadway
One Park Avenue
123 East 86th Street
Varick at Vandam Street
4255 Broadway
135 East 14th Street
86th Street at Broadway
Fifth Avenue at 41st Street
Madison Avenue at 72nd Street
72nd Street near Third Avenue
79th Street at Amsterdam Avenue
Fifth Avenue at 13th Street
22 William Street
34th Street at Seventh Avenue
Park Avenue at 96th Street
220 East 42nd Street
111th Street at Broadway
79th Street at First Avenue
23rd Street near Lexington Avenue
Seventh Avenue at 23rd Street
125th Street at Old Broadway
135 West 125th Street near Seventh Avenue

BOROUGH OF BRONX

149th Street at Courtland Avenue Creston Avenue near Fordham Road.

BOROUGH OF BROOKLYN

181 Montague Street
Nostrand Avenue at Herkimer Street
Myrtle Avenue at Clinton Avenue
Fifth Avenue at 54th Street
Flatbush Avenue near Bergen Street
Flatbush Avenue at Church Avenue
Myrtle Avenue at Bleecker Street
Kings Highway at East 15th Street
Pennsylvania Avenue at Liberty Avenue
Eighteenth Avenue at 64th Street
Fourth Avenue at 85th Street
Third Avenue at 36th Street
Flatbush Avenue at Livingston Street
Manhattan Avenue at Noble Street
618 Brighton Beach Avenue

BOROUGH OF QUEENS

39–10 Main Street, Flushing
Queens Plaza East, Long Island City
218th St. at Jamaica Ave., Queens Village
Myrtle Avenue at Fresh Pond Road, Ridgewood
Continental Avenue at Austin Street, Forest Hills
92–11 Union Hall Street, Jamaica
Roosevelt Avenue at 81st Street, Jackson Heights
30th Avenue at 37th Street, Astoria

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THE NATIONAL CITY COMPANY
National City Bank Building, New York

(Investment affiliate of The National City Bank of New York)

CHARLES E. MITCHELL, Chairman.

HUGH B. BAKER, President

Offices in more than fifty leading financial centers throughout the United States and in foreign countries.

**Exhibit E**

PHILIPPINE ISLANDS
CITY OF MANILA } *ss.*

I, Cesar Miraflor, a notary public in and for the City of Manila, Philippine Islands, do hereby certify that I have compared the foregoing copy of the Power of Attorney executed by The National City Bank of New York in favor of Richard E. Shaw, through its Vice-President, H. T. S. Green, on the 7th day of February, 1930, and that the same is a true and correct copy of the Power of Attorney duly filed with the Mercantile Register of the Bureau of Commerce on the 19th day of March, 1930, which was shown to me for the purpose.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal, this 26th day of August, 1933.

Document No. 618; Page 40; Book IV; Series of 1933.

(Sgd.) CESAR MIRAFLOR
*Notary Public*
*My commission expires December 31, 1934*

CM–31.

(20–CENTAVO DOCUMENTARY STAMP)

(August 26, 1933)

POWER OF ATTORNEY TO RICHARD E. SHAW
Manager

UNITED STATES OF AMERICA
STATE OF NEW YORK } *ss.*
COUNTY OF NEW YORK

On this 4th day of February, 1930, before me, a Notary Public in and for the County of New York,

State of New York, United States of America, and the undesigned witnesses, appeared H. T. S. Green, a Banker, domiciled in Hewlett, New York, the Vice-President of a corporation duly constituted and registered in accordance with the laws in force in the United States of America, under the name of The National City Bank of New York. The said H. T. S. Green is of full age and competent to act in the premises, to me personally known, all of which I attest. I further certify that the said H. T. S. Green is authorized to execute this instrument in virtue of the powers granted to him by Resolution of the Board of Directors of the said Bank, the By-Laws of the said Bank and the laws of the United States of America. The appearer said: That, in the name and on behalf of the corporation named The National City Bank of New York, he hereby nominates, constitutes and appoints Richard E. Shaw, Manager, of legal age, Banker, and now residing in Manila, Philippine Islands, the true and lawful attorney and agent of the said Bank, with full power and authority as Manager, in the name or on behalf of the said Bank, or any of its Branches, or any interest it or they may have or represent, as follows:

I. As manager, to manage, transact and generally conduct in the name of the said Bank, and in its place and stead, a general banking business at any and all branches, sub-branches, agencies or offices of the said Bank now or hereafter established, with all powers and authority requisite and necessary for that purpose and, subject to the limitations hereinafter expressed, to sign the name of said Bank whenever requisite or expedient in the transaction and conduct of its said business and, generally, to do each and every

such act, matter or thing as the nature of the said banking business may require.

II. To make, sign, draw, issue, indorse, discount, negotiate, pay, accept, collect, receipt, renew, extend and protest any and all bills of exchange, checks, drafts, promissory notes, letters of credit or other negotiable instruments and other documents of credit, ordinary correspondence, advices of drafts drawn and indorsements on checks, drafts and bills of exchange deposited for the credit of the Home Office or any Branch, provided, however, that all such instruments or documents involving payments or transfers of funds or transfers or deliveries of securities from the Bank or any of its branches to any other bank, corporation, firm or individual shall bear the joint signatures of the said Richard E. Shaw, Manager, and of one other person, who shall be designated from time to time by the Chairman, President, a Senior Vice-President or a Vice-President of the said Bank in writing for the purpose or whose signature shall be contained in the then current Circular of "Authorized Signatures of the National City Bank of New York and its Branches," or who shall hold a power of attorney from the said Bank for the above-mentioned purposes.

III. To buy, sell, receive, hold, transfer, deliver, hypothecate and pledge any and all bills, bills of lading, bullion, checks, drafts, exchange, money, accounts notes, bonds or other negotiable instruments, property or documents purporting to evidence title thereto, and any and all securities or property whatsoever; to accept the transfer and delivery of any and all shares of the capital stock of any corporation or association, whether organized for banking, commercial, industrial, or other purposes, including bonds of any state and any and

all state securities, with power to carry out all formalities laid down by law and by regulations applying to the transfer and registration thereof; and likewise to indorse, transfer and deliver such certificates or shares or securities and to effect such transfer on the books of any corporation or association; provided, however, that any act done pursuant to the authority of this Article III shall require the joint action or signature of the said Richard E. Shaw, Manager, and of one other person who shall be designated, from time to time by the Chairman, President, a Senior Vice-President or a Vice-President of the said Bank in writing for the purpose or whose signature shall be contained in the then current Circular of "Authorized Signatures of The National City Bank of New York and its Branches," or who shall hold a power of attorney from the said Bank for the above-mentioned purposes.

IV. In case of the absence or inability to act of the said Richard E. Shaw, Manager, all instruments and documents which he has power to sign or execute alone or jointly on behalf of the Bank hereunder may be signed or executed, alone or jointly, as the case may be, either by such person or persons as may from time to time be designated by the Chairman, President, a Senior Vice-President or a Vice-President of the said Bank in writing for the purpose or by any person whose signature shall appear in the said Circular as authorized to sign, otherwise than Per-Procuration, at the Home Office or as a Branch Manager, and, in case of the absence or inability to act both of any person authorized thus to sign at the Home Office and of any Branch Manager, all such instruments and documents

may be so signed or executed, alone or jointly, as the case may be, by any person whose signature shall appear in the said Circular as authorized to sign as a Sub-Manager; and, in case of the absence or inability to act of any person authorized thus to sign at the Home Office and of any Manager and of any Sub-Manager, all such instruments and documents may be so signed or executed, alone or jointly, as the case may be, by any person whose signature shall appear in the said Circular as authorized to sign as a Pro-Manager; for which purpose the person or persons who shall be so designated in writing or whose signatures shall appear in the said Circular are hereby appointed special attorneys in fact. For the protection of third parties dealing with the Bank in reliance hereon, the fact that any instrument is signed by a person authorized as provided in this Paragraph IV, acting as a substitute in the place and stead of the Manager, owing to the absence or inability to act of the Manager, or acting as substitute for any other person authorized to sign as in this paragraph provided, owing to the absence or inability to act of such other person, the fact that such document or instrument is signed by such substitute shall be deemed conclusive proof that the Manager or other person for whom such substitute so signs was, at the time of such signing, either absent or unable to act.

V. To open, receive and maintain deposit and other accounts, and to act as Trustee or depositary.

VI. To borrow money and to make loans, with or without collateral security, upon bonds, stocks or other documents of title, sugars, coffee, goods or other properties.

VII. To ask, demand, collect, receive and take all necessary and lawful means to recover any and all moneys, debts or property and to give acquittances therefor.

VIII. To give, receive and carry out orders on commission and to forward goods and securities.

IX. To carry out custom house operations.

X. To make out or obtain acknowledgments and way-bills.

XI. To take delivery of letters, telegraphic messages, drafts, packages, and securities of any kind, from State Officers or from the Post Office, Railways or Steamship Companies against the necessary receipt and discharge signature.

XII. To procure insurance against fire, marine or other risks to property of the said Bank, or in which it may be concerned or have or represent any interest.

XIII. To hire, rent or lease any and all real estate and personal property, with power to execute all necessary indentures, leases and other documents in connection therewith, upon such terms as the said attorney may find proper, and to accept guaranties and chattel mortgages.

XIV. To register deeds and other documents and these presents and to pay any and all taxes, fees or other governmental charges determined by law.

XV. To take mortgages on real estate or on mortgage credits; to cancel them partially or totally; to modify or extend them; or to cede, transfer, assign, postpone or otherwise dispose of them with or without general or special warranty, any document executed hereafter in the exercise of any power conferred by

this Article XV to be countersigned in the manner provided in Article III hereof.

XVI. To attach, distrain or replevy property.

XVII. To liquidate accounts with debtors and creditors, approving or disapproving their balances.

XVIII. To apply for letters of administration upon the estate or for the appointment of a liquidator or receiver of any debtor; to institute proceedings in bankruptcy, insolvency or judicial liquidation; to prove, guarantee, verify, accept, dispute or prosecute claims, and to sign any composition or other agreement and, in general, to represent the said Bank in such proceedings or in the affairs of any corporation or association and, on behalf of the said Bank, to become a director or officer thereof.

XIX. To attend, take part in or vote at any and all meetings of creditors, shareholders, directors or officers of any corporation or association, or for other business purposes, or to give proxy therefor.

XX. To adjust, compound, compromise, contest, defend, settle or submit to arbitration or the decision of amicable referees any and all controversies, suits, actions and other legal or equitable proceedings in which the Bank may be interested, and to participate in any scheme of distribution of funds.

XXI. To represent and defend the Bank and its interests before any and all judges and courts, of all classes and jurisdictions, in any action, suit or proceedings in which the Bank may be a party or may be interested in administrative, civil, criminal, contentious or contentious-administrative matters, and in all kinds of lawsuits, recourses or proceedings of any kind

or nature, with complete and absolute representation of the Bank, whether as plaintiff or defendant, or as an interested party for any reason whatsoever, and with power to institute actions, file exceptions, counter demand, submit proofs and allegations, initiate the regular and special recourses, make bids, undertake the execution of sentences, challenge all kinds of judges or officials, propound interrogatories, request the recognition of signatures or of documents, institute all kinds of actions for the repression of crimes, file pleas for "amparo" and oppose its being granted to others, and desist from all classes of actions, exceptions and recourses; for the purpose of representing the Bank before any and all judges and courts and in any action, suit or proceeding whatsoever in which the Bank is interested, to employ, retain, dismiss and grant all necessary powers in favor of solicitors, proctors, lawyers or other persons suitable to defend the rights, privileges and interests of the Bank, with such powers as may be considered necessary or expedient, although they are not herein mentioned, and, in general, to exercise all the rights of the Bank in all kinds of suits, actions, and legal or equitable proceedings; with power to collect the amount of sums lodged in Court on behalf of the Bank and for such amounts collected to make out receipts in legal form.

XXII. To employ, retain, suspend or dismiss any and all tellers, clerks and other employees at any branch, sub-branch, agency or office of the said Bank now or hereafter established.

XXIII. To authenticate by his signature at any time, and from time to time, for the purpose of giving full force and effect thereto for all purposes under any law in force in any country or subdivision of any

country, (*a*) any writing signed by the Chairman, President, a Senior Vice-President or a Vice-President of The National City Bank of New York, designating a person to sign as provided in Paragraphs II, III, IV, and XV of this Power of Attorney, and (*b*) the then current Circular of "Authorized Signatures of The National City Bank of New York and its Branches." Every such writing or current circular so authenticated by him shall be entitled to full faith and credit before every office and authority in any country or subdivision of any country, and the person named therein who shall sign jointly or alone as provided in said Paragraphs II, III, IV, or XV of this power of attorney shall be as fully authorized to so sign, jointly or alone, in the events and for the purposes mentioned in said Paragraphs II, III, IV, and XV, as though he had been furnished with a special power of attorney from the Bank empowering him to do so; and all such persons are hereby fully vested with such power.

XXIV. To present for official registration certified copies of the Bank's Articles of Association, By-Laws and any other documents required by the laws of any country or place in which this power of attorney may be registered, and to do and perform any and all other acts and things required by the laws of any such country or place relating to the establishing or the maintenance in business of foreign corporations therein and the opening of branches thereof, and also for said Bank and in its name and as its act, to accept service of summons and process in all legal proceedings against the Bank and all notices affecting it, to render reports and evidence of the solvency and fair dealing of the Bank and any other information of whatever kind or nature that may from time to time be required

of the Bank by the Secretary of Commerce and Communications or his authorized representative or other government authorities, to do all things necessary to prosecute the application of this Bank for a license to do business in the Philippine Islands, to make such alterations and amendments in such application as may be necessary to conform to the requirements of the governmental authorities, to receive the license, and to do and perform any and every act and thing whatsoever which may be necessary in connection therewith.

And the said The National City Bank of New York hereby ratifies and confirms all that its said Attorney may or shall lawfully do or cause to be done within the powers which are conferred by virtue of this instrument, including that which he may do or cause to be done after the revocation of the said powers but before notification of such revocation.

IN WITNESS WHEREOF, The National City Bank of New York has caused this instrument to be signed by one of its Vice-Presidents, and its corporate seal to be hereto affixed, this 7th day of February, 1930.

(Sgd.) H. T. S. GREEN

Witnesses:

(Sgd.) G. DENZAU

(Sgd.) R. B. WILLIAMS

STATE OF NEW YORK }
COUNTY OF NEW YORK } *ss.*

On this 4th day of February, 1930, before me personally came H. T. S. Green, to me known, who being by me duly sworn, said that he resides in Hewlett, New York; that he is a Vice-President of The National City

Bank of New York, the corporation described in and which executed the foregoing instrument; that he knows the seal of the said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by authority of the Board of Directors of the said corporation, and that he signed his name thereto by like authority.

(Sgd.) CLARA E. VAN EMDEN
*Notary Public New York County*
*N. Y. Co. Clks. No. 10, Reg. No. 0–53*
*Commission expires March 30, 1930*

No. 5874, Series C

STATE OF NEW YORK }
COUNTY OF NEW YORK } *ss.*

I, Daniel E. Finn, Clerk of the County of New York, and also Clerk of the Supreme Court for the said County, the same being a Court of Record, having a seal, do hereby certify, that

CLARA E. VAN EMDEN

whose name is subscribed to the deposition or certificate of the proof or acknowledgment of the annexed instrument, and thereon written, was, at the time of taking such deposition, or proof and acknowledgment, a Notary Public in and for such County, duly commissioned and sworn, and authorized by the laws of said State, to take depositions and to administer oaths to be used in any Court of said State and for general purposes; and also to take acknowledgments and proofs of deeds, of conveyances for land, tenements or hereditaments in said State of New York. And further, that I am well acquainted with the handwriting of such Notary Public, and verily believe that the signature to

said deposition or certificate of proof or acknowledgment is genuine.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the said Court and County, the 6th day of February, 1930.

(Sgd.) DANIEL E. FINN
*Clerk*

GOVERNMENT OF THE PHILIPPINE ISLANDS
DEPARTMENT OF AGRICULTURE AND COMMERCE
BUREAU OF COMMERCE
MERCANTILE REGISTER

TO ALL TO WHOM THESE PRESENTS MAY COME, GREETING:

This is to certify that the annexed is a true and complete transcript of the

POWER OF ATTORNEY EXECUTED BY "THE NATIONAL CITY BANK OF NEW YORK," IN FAVOR OF RICHARD E. SHAW,

which were duly filed with the Mercantile Register of the Bureau of Commerce on the 19th day of March, Anno Domini nineteen hundred and thirty.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the seal of the said Register to be affixed at Manila, this eleventh day of February, Anno Domini nineteen hundred and thirty-three.

(Sgd.) TOMAS CONFESOR
*Director*

(SEAL.)
(STAMP.)

## Exhibit F

B. I. R. No. 35
NEW B. I. R. No. 601

# BANKS AND BANKERS

Schedule G  Paragraph..... Assessment No. .....

Statement of the monthly amount of deposits, capital employed, of the The National City Bank of New York, Municipality or Province of Manila, Philippine Islands, for the six months ending June 30th, 1931.

(Section 1501, Article VII, Act No. 2711)  NOTE.—All amounts to be reduced to Philippine currency.

| | JANUARY | FEBRUARY | MARCH | APRIL | MAY | JUNE | TOTAL TAXES |
|---|---|---|---|---|---|---|---|
| Average monthly deposit.... | ₱17,733,470.58 | ₱18,419,904.88 | ₱18,019,597.35 | ₱18,173,420.89 | ₱18,293,437.61 | ₱18,338,993.16 | ₱60,543.79 |
| Taxes at rate of $\frac{1}{10}$ of 1 per cent. Total Foreign Banks | 324,493.92 | 167,915.75 | 293,765.97 | 171,102.48 | 116,597.26 | 141,273.87 | 675.64 |
| Average capital employed.... | 6,441,872.28 | ..... | ..... | ..... | ..... | 6,441,872.28 | 16,104.68 |
| Taxes at rate of $\frac{1}{4}$ of 1 per cent..... | ..... | ..... | ..... | ..... | ..... | ..... | ..... |
| Average circulation..... | ..... | ..... | ..... | ..... | ..... | ..... | ..... |
| Taxes at rate of $\frac{1}{12}$ of 1 per cent..... | ..... | ..... | ..... | ..... | ..... | ..... | ..... |
| Average circulation in excess of paid-in capital..... | ..... | ..... | ..... | ..... | ..... | ..... | ..... |
| Taxes at rate of 1 per cent.... (Circulation taxes collected under Act 1790 are reported on B. I. R. Form No. 892) | ..... | ..... | ..... | ..... | ..... | ..... | ..... |
| GRAND TOTAL..... | ..... | ..... | ..... | ..... | ..... | ..... | 77,324.11 |

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89

I hereby certify that the foregoing is a true and complete statement of the average monthly amount of deposits, capital employed, of the THE NATIONAL CITY BANK OF NEW YORK, Municipality or Province of Manila, Philippine Islands, subject to taxes under the provisions of Art. VII, Act No. 2711, Philippine Legislature, for the six months ending June 30, 1931.

(Sgd.) F. C. BAILEY
*Pro-Manager*

[SEAL]

Tax paid by receipt No. paid 10|27|31
Schedule G. Paragraph . . Assessment No. . .

(Collecting officer)

PHILIPPINE ISLANDS
Province of . . . . . } ss.
Municipality of City of Manila

Rendered in Duplicate

Subscribed and sworn to before me this 24th day of October, 1931.
Person signing exhibited to me his Cedula No. F-2502 issued at Manila, P. I., on Jan. 8, 1931.

Doc. No. 109 Page 61
Book VI Series of 1931
My commission expires Dec, 31, 1932.

(Sgd.) . . . . . .
*Notary Public*

(To be filled out in the cases of banks operating as branches of foreign banks for capital tax purposes)

Capital (paid up). . . . . $110,000,000.00

| | | |
|---|---|---|
| RESERVE FUNDS: | | |
| ..... | $..... | |
| ..... | $..... | $..... |
| ..... | $..... | |
| Surplus | | $90,000,000.00 |
| ..... | | ..... |
| Undivided Profits | | $24,554,298.54 |
| ..... | | ..... |
| ..... | | ..... |
| TOTAL CAPITAL on first day of semester (January, 1931) | | $224,554,298.54 |
| TOTAL CAPITAL reduced to Philippine Currency | | ₱449,108,597.08 |
| Net Profit at close of semester, as per attached balance sheet | | $10,690,303.41 |
| Net Profit at close of semester, reduced to Philippine Currency | | ₱21,380,606.82 |
| Net Profit of Manila Branch, including all branches within the Philippine Islands | | ₱303,702.22 |
| Rate of exchange at close of business, last day of semester Dividend March 31 | 4,510,000.00 | ..... |

I HEREBY CERTIFY that the foregoing is a true and correct statement of the capital, net profit of the bank and of its Manila branch, and of the rate of exchange prevalent at the close of the semester covered by this return.

.....

*Manager*

The capital of the bank at the beginning of the semester will be ascertained by adding together the paid up capital, all reserve funds, surplus, and undivided profits. The monthly profits not being readily ascertainable, the *average* monthly profits should be used, same being ascertained by dividing by six the net gain at the close of the semester. By adding the average profit of the first month of the semester to the capital at the beginning of the semester, the capital for the second month of the semester is obtained; by adding the average profit of the second month to the capital thereof, ascertained as indicated, the capital for the third month is obtained, and so on up to the last month of the semester.

To obtain the average capital of the bank for the semester, add together the capital for the individual months, as ascertained above, and divide by six.

MANILA, Aug. 29, 1933

I HEREBY CERTIFY that this is a true copy of the original Bank tax return on National City Bank of N. Y. for the year 1931, on file in the Bureau of Internal Revenue and that I am the legal custodian of the income tax records of said Bureau.

(Sgd.) CRISPIN LLAMADO
*Chief, Income Tax Division*
*Bureau of Internal Revenue*

[SEAL]

## Exhibit G

TO BE FILLED IN BY RECEIVING OFFICER

Received by Bur. of Int. Revenue.

Municipality of Income Tax Division.

Province of.....

Date received Apr. 30, 1932.

IMPORTANT

Read this form and all instructions carefully, answer the questions below and fill in the supplementary statement before making entries in return proper. Totals in supplementary statement must agree with totals in return.

B. I. R. FORM No. 17.02
OLD B. I. R. FORM No. 571
(Revised, May, 1931)

# INCOME TAX

THE PENALTY for failure to have this return in the hands of the Collector or Provincial Treasurer within the time required by law is not more than ₱20,000 and the assessment is increased fifty per cent.

TO BE FILLED IN BY THE BUREAU OF INTERNAL REVENUE

Assessment No. A-30708, 1931.

Indexed by.....

Audited by.....

Assessed by.....

Recorded by.....

Transcribed by.....

TO BE FILLED IN BY TAXPAYER

Date of Incorporation.....

Under the laws of what country or state?.....

.....

Kind of business.....

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# RETURN OF ANNUAL NET INCOME

(Chapter II of Act No. 2833, as amended by Acts Nos. 2926, 3026, 3605 and 3761)

## CORPORATIONS

(Including domestic and foreign joint-stock companies, joint-accounts ("cuentas en participación"), associations, limited partnerships, general copartnerships, and corporations proper: EXCLUDING insurance companies and registered domestic general copartnerships, for which other forms of return are provided.)

Return of net income for the calendar year ended December 25th, 1931. By National City Bank of New York (Manila, Cebu) and located at Manila.

The address given must be that of the principal place of business of the corporation. If not a corporation, state nature of company, association or partnership and date of registration in the Mercantile Registry. If not registered, state so.

| | | | |
|---|---|---|---|
| 1. Gross income: | | DEDUCTIONS | |
| (a) From operations | ₱425,392.59 | 2. (a) Expenses, general | ₱605,068.97 |
| (b) From rentals | | (b) Payments in lieu of rent | |
| (c) From interest | 1,354,379.65 | 3. (a) Losses sustained charged off | 216.76 |
| (d) From dividends received | | (b) Depreciation charged off | 9,694.83 |
| (e) From other sources | 280,076.59 | (c) Depletion charged off | |
| Total gross income | 2,059,848.83 | 4. (a) Interest paid (see note 4a) | 727,101.74 |
| Total deductions | 1,540,977.22 | (b) Interest paid on deposits (deductible by banks only) | |
| Net income | 518,871.61 | 5. (a) Taxes, domestic paid | 198,894.92 |
| 7. Tax assessable at 3 per cent | 15,566.15 | (b) Taxes, foreign paid | |
| 8. | | Total deductions | 1,540,977.22 |
| Total amount due | | | |

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## QUESTIONS

### PREDECESSOR BUSINESS

1. Did the corporation file a return under the same name for the preceding taxable year?..... If not, was the corporation in any way an outgrowth, result, continuation or reorganization of a business or businesses in existence during this or the preceding taxable year?..... If answer is "yes," give name and address of each predecessor business.

.....

.....

### BASIS OF RETURN

2. Is this return made on the basis of accrued income and expenses?..... If not, describe fully what other basis or method was used in computing net income.....

.....

.....



### ACCOMPANYING PAPERS

This return will not be accepted as complete unless accompanied by the following:

1. Balance sheet as of the last day of the taxable year (as required on page 4).
2. Returns of information covering income payments of ₱2,000 or more during the year (as required on page 4).
3. Returns of information covering dividends paid during the year (as required on page 4).

If any of the foregoing does not accompany this return, cross out same with ink and state below your reasons for failure to supply same.

.....

.....

All other statements, papers, etc. accompanying this return should be listed below.

.....

.....

---

We, officers of the above-named company, whose return of net income is herein set forth, being severally duly sworn, each for himself, depose and say that the items entered in the foregoing report and in the supplementary statement and in any of the papers accompanying this return are, to his best knowledge and belief, true and correct in each and every particular.

Sworn to and subscribed before me this 28th day of April, 1932.

(Sgd.) .....
Notary Public

My commission expires Dec. 31, 1932
Doc. No. 198. Page 97, Bk I, Series '32

Cedula No. F-9890
Issued at Manila.
Date Jan. 7, 1932.

Cedula No. F-9884
Issued at Manila.
Date Jan.7, 1932.

(Sgd.) .....
President

(Sgd.) .....
Treasurer

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## SUPPLEMENTARY STATEMENT

The following information must be furnished by every corporation, joint-stock company, partnership, joint-account, or association, without which the return will not be accepted as complete. The items herein relate to the items listed in the above return form and bear corresponding numbers, and the totals set out in the above return must agree with the totals hereinafter set out.

Where sufficient space is not provided for the entry of the information required in this "Supplementary Statement," lists containing full information in the form indicated should be marked in accordance with the particular item end attached to this form.

**PAID UP CAPITAL STOCK:**

Unissued or treasury stock should not be included in this item, but only such stock as has been actually issued and is outstanding at the close of the year and for which payment has been received. Where the stock issued is payable in installments or assessments, only so much of it as has been actually paid in upon such installments or assessments should be reported.

If no capital stock is issued or if the capital stock is issued without par value, the amount of capital invested in the business at the close of the year, not including borrowed capital, will be entered under this item.

| | | | | |
|---|---|---|---|---|
| (*a*) Paid-up "common stock" | ₱..... | ..... | ..... | ... |
| (*b*) Paid-up "preferred stock" | ..... | ..... | ..... | ... |
| Total paid-up stock | ₱..... | ..... | ..... | ... |
| or (*c*) Capital employed in business | ..... | ..... | ..... | ... |

1. **GROSS INCOME:**

All manufacturing, mercantile, or other corporations which determine their annual gain or loss by inventory are required to state the same in the form indicated herein. If the annual income or loss is determined otherwise, the methods employed must be stated in the space provided therefor. In case the annual gain or loss is determined by inventory, merchandise should be valued at (*a*) cost or (*b*) cost or market, whichever is lower, provided, however, that whichever basis was adopted by a taxpayer for the taxable year 1922 must be continued unless upon application to the Collector of Internal Revenue, permission is granted to change. If basis (*b*) is used it must be applied to each item in the inventory and not to a part only.

Write "C" or "CM" immediately before the amount column of the "stock on hand at close of year" and "stock on hand at beginning of year" to indicate that inventories are valued at either cost or cost or market, whichever is lower.

(*a*) **FROM OPERATIONS:**

**Per inventory—**

| | | |
|---|---|---|
| Sales during year | ₱ | |
| Stock on hand at close of year | | ₱ |
| TOTAL | | ₱ |
| Purchases during year | ₱ | |
| Stock on hand at beginning of year | | ₱ |
| TOTAL | | ₱ |
| *Gross gain or loss [1(*a*)] | | ₱ |

*(If result shows loss, make entry in red ink or strike out "gain.")

In the case of manufacturing corporations, "Purchases during the year" will include so much of the cost of goods, finished or unfinished, sold or unsold, as has not been separately deducted under any item of the return.

Overhead charges should not be included in inventory (see Item 2).

If inventory is not used, state below method of determining gain or loss from operations:

.....

.....

.....

In case of the sale of capital assets acquired prior to March 1, 1913, the profit or income to be returned will be determined in accordance with the Revised Income Tax Regulations. If acquired subsequent to March 1, 1913, then the profit or income to be returned is the difference between the cost and the selling price.

In the case of the sale of assets acquired prior to March 1, 1913, state—

(1) Original cost of assets..... ₱.....

(2) Fair market price or value as of March 1, 1913..... ₱.....

(3) Price at which assets were sold..... ₱.....

State how fair market price or value as of March 1, 1913, was determined:

.....

.....

.....

(b) FROM RENTALS AND ROYALTIES:

| NAME AND ADDRESS OF TENANT OR LESSEE | AMOUNT OF RENTALS AND ROYALTIES |
|---|---|
| | ₱ |
| | |
| | |
| | |
| TOTAL | ₱ |

(c) FROM INTEREST:

| NAME OF PERSON OR COMPANY PAYING INTEREST | ADDRESS | AMOUNT |
|---|---|---|
| | | ₱ |
| | | |
| | | |
| | | |
| TOTAL | | ₱ |

(d) **FROM DIVIDENDS RECEIVED:**

Income derived from dividends or net profits on which the normal tax has been paid is not subject to tax. However, dividends received from corporations or associations which do not pay or are exempt from the payment of income tax, are subject to tax under this law.

| NAME OF THE COMPANY PAYING THE DIVIDEND | ADDRESS | AMOUNT |
|---|---|---|
| | | ₱ |
| | | |
| | | |
| | | |
| | | |
| | | |
| TOTAL | | ₱ |

(c) FROM OTHER SOURCES:

| NATURE OF SOURCES | ADDRESS | AMOUNT |
|---|---|---|
| Commission | | ₱95,091.38 |
| Excess Reserve for Taxes | | 30,000.00 |
| Other Income | | 112,892.90 |
| Philippine Refining Company, Interest of New York | | 11,048.52 |
| Recoveries received to New York | | 31,043.79 |
| TOTAL | | 280,076.59 |

DEDUCTIONS

2. EXPENSES, GENERAL:

This item should include only the ordinary and necessary expenses paid or accrued within the year in the maintenance and operation of the business and properties of the corporations, itemized as per schedule below, and will not include any disbursements the deductions of which is specially provided for in the return form proper on page 1 of this form.

All expenses of material, labor, fuel, and other items entering into the cost of goods sold are deductible under this head as expenses provided such items have not been considered in determining the cost of purchases during the year when the income derived from operations is ascertained through an inventory as set out in item 1 (a) of this statement.

Expenditures for incidental repairs which do not add to the value or appreciably prolong the life of property are deductible as expenses, but expenditures for new buildings, permanent improvements or betterments which increase the value of property, or for restoring or replacing property are not deductible under this or any other item of the return. Such expenditures are property chargeable to capital account, to be extinguished through annual depreciation allowances.

Payments made to officers or employees who are stockholders, which payments are made in the guise of salaries or compensation and the amount of which is based upon the stockholdings of such officers or employees, are not deductible as a business expense.

| | | |
|---|---|---|
| (b) 1. Labor, wages, commissions, etc. | | ..... |
| 2. Fuel, light, power, etc. | | ₱10,695.39 |
| 3. Rentals (ordinary) | | 94,800.00 |
| 4. Repairs, ordinary and incidental | | ..... |
| 5. Salaries of officers and employees | | 361,242.11 |
| 6. Other expenditures—classify | Advertising | 6,804.72 |
| | Brokerage | 6,400.00 |
| | Cables | 22,950.49 |
| | Law cost | 11,774.05 |
| | Stationery | 15,706.88 |
| | Traveling | 25,278.25 |
| | Staff House | 15,164.72 |
| | Portage | 4,543.13 |
| | Insurance | 4,270.79 |
| | Sundries | 25,438.44 |
| TOTAL EXPENSES | | 605,068.97 |

(b) **PAYMENTS IN LIEU OF RENTS:**

This item should include all royalties and other charges, including any interest payments which the corporation is required to make for the right to use and possess property in which it has no title, interest, or equity. See Note 2 (a).

3. (a) **LOSSES:**

Losses deductible under this item must be distinguished from depreciation or allowances for exhaustion, wear and tear. The losses must be absolute, complete, actually sustained during the year and charged off on the books of the corporation, and if the losses result from the sale of assets acquired prior to March 1, 1913, such losses shall be ascertained in accordance with the Revised Income Tax Regulations.

Losses compensated by insurance or otherwise are not deductible.

| KIND OF ASSETS | ORIGINAL AMOUNT | DATE CHARGED OFF | AMOUNT CHARGED OFF |
|---|---|---|---|
| | ₱..... | ₱..... | ₱..... |
| | | | |
| | | | |
| | | | |
| TOTAL | ₱..... | ₱..... | ₱..... |

When were the deducted losses ascertained to be such?

How were they so ascertained?

In case of losses resulting from the sale of capital assets acquired prior to March 1, 1913, state—

(1) Original cost of assets..... ₱.....

(2) Fair market price or value as of March 1, 1913..... ₱.....

(3) Loss resulting from such sale..... ₱.....

State also how the fair market price or value as of March 1, 1913, was ascertained:

.....

.....

---

(*b*) **DEPRECIATION:**

The amount deductible on account of depreciation is an amount charged off on the books which fairly measures the loss during the year in the value of physical property by reason of exhaustion, wear and tear. Such amount should be determined upon the basis of the COST of the property and the probable number of years constituting its life. Stocks, bonds, and like securities, as well as any other intangible assets, are not subject to exhaustion, wear and tear within the meaning of the law. Hence any amount charged off as representing a SHRINKAGE in the value of such assets is not deductible either as depreciation or loss.

Depreciation computed on total invoice value of merchandise in stock is not an allowable deduction, since any loss due to the shrinkage in the salable value of the merchandise will be reflected in the sales when the merchandise is disposed of.

| * Kind of Property | Its Cost | Probable Life After Acquisition | Amount of Depreciation | |
|---|---|---|---|---|
| | | | This Year | All Years to Date |
| Furniture and fixtures | ₱..... | ..... | ₱9,694.83 | ₱..... |
| ..... | ..... | ..... | ..... | ..... |
| ..... | ..... | ..... | ..... | ..... |
| ..... | ..... | ..... | ..... | ..... |
| Totals..... | ₱..... | ..... | ₱..... | ₱..... |

* If buildings, state kind of construction.

(c) **DEPLETION:**

Depletion applies to the exhaustion of natural deposits, and contemplates a deduction to return to the corporation the capital invested, or in case of purchase prior to March 1, 1913, an amount sufficient to return to the corporation the fair market value of such deposits as of that date. An allowable deduction on account of depletion must not exceed that fair market value in the mine of the product thereof [redacted]ned and sold during the year, and in case of oil or gas wells the amount deductible should be computed upon the basis of the decline in the settled flow. The amount sought to be deducted on this account must be charged off on the books of the company.

| * Kind of Property | Its Cost if Acquired Subsequent To March 1, 1913 | † Fair Market Value As of March 1, 1913 | Amount of Depletion | |
|---|---|---|---|---|
| | | | This Year | All Years to Date |
| | | ₱ | ₱ | ₱ |
| | | | | |
| | | | | |
| | | | | |
| TOTAL | | ₱ | ₱ | ₱ |

* Coal, iron ore, copper, oil, or gas. † State how fair market value as of March 1, 1913, was determined.

4. (a) **INTEREST DEDUCTIBLE:**

The amount of interest deductible under this item is the amount actually paid or incurred within the year on bonded or other indebtedness (except on indebtedness incurred for the purchase of obligations or securities the interest upon which is exempt from taxation as income).

Interest, so called, or dividends paid upon preferred capital stock, is not deductible.

Interest deductible under this item includes all interest actually paid or incurred within the year on any debt for which the corporation or any property in which it has title, interest, or equity is pledged.

INTEREST PAYMENTS ACTUALLY MADE OR INCURRED DURING THE YEAR

All forms of indebtedness upon which interest was paid or incurred should be listed here.

| Name or Kind of Obligation | Amount of Principal | Rate of Interest | Amount of Interest Paid |
|---|---|---|---|
| | ₱ | | ₱ |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| TOTAL | ₱ | | ₱ |

(b) INTEREST PAID ON DEPOSITS:

Interest paid (by banks) on deposits or on money received for investment and secured by interest-bearing certificates of indebtedness issued by a bank, banking associations, loan or trust company is deductible in the entire amount so paid.

5. (a) TAXES—INSULAR, MUNICIPAL OR PROVINCIAL. ₱198,894.92.

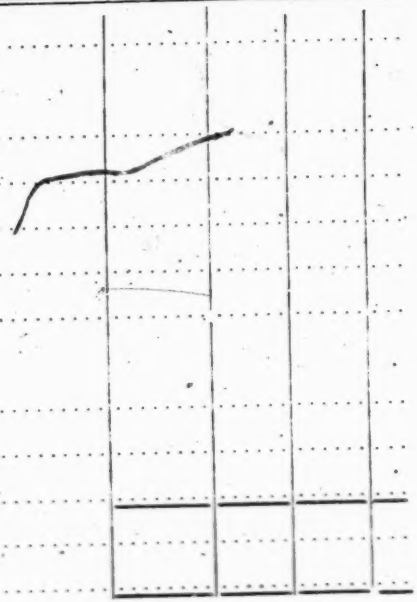
(b) TAXES—FOREIGN:

Taxes deductible under this item are such taxes as are imposed by the Government of the Philippine Islands, or by any province, city, municipality or township or by the Government of any foreign country, and are actually paid or accrued on the books of the corporations, which have become due and payable within the year for which the return is made, except that taxes imposed under the laws of a foreign Government are not deductible from the income arising and accruing to a foreign corporation from sources within the Philippine Islands, and except that taxes paid for local benefits or taxes paid by corporations pursuant to covenants guaranteeing their bonds to be tax-free, are not deductible.

Taxes paid by banks or other corporations on the value of their capital stock outstanding and in the hands of stockholders are not deductible. Such taxes are a primary liability of the stockholders, and as such chargeable against their net income.

## RECONCILIATION OF NET INCOME AND ANALYSIS OF CHANGES IN SURPLUS

1. Net income (Item 6, page 1 of the return)
2. Nontaxable income (to be detailed):
   (*a*)
   (*b*)
   (*c*)
   (*d*)
3. Charges against reserve for bad debts
4. Charges against reserves for contingencies, etc., (to be detailed):
   (*a*)
   (*b*)
   (*c*)
5. Total of Lines 1 to 4, inclusive
6. Total from Line 14



7. Net profit for year as shown by books, before any adjustments are made therein (Line 5 minus Line 6)

8. Surplus and undivided profits as shown by balance sheet at close of preceding taxable year

9. Other credits to surplus (to be detailed):

   (a)

   (b)

   (c)

10. Total of Lines 7 to 9, inclusive

11. Total from Line 17

12. Surplus and undivided profits as shown by balance sheet at close of taxable year (Line 10 minus Line 11)

13. Unallowable deductions:

   (a) Donations, gratuities and contributions

   (b) Furniture and fixtures, additions, or betterments treated as expenses on the books

   (c) Replacements and Renewals

   (d) Additions to reserve for bad debts

   (e) Additions to reserves for contingencies, etc., (to be detailed):

      (1)

      (2)

      (3)

## RECONCILIATION OF NET INCOME AND ANALYSIS OF CHANGES IN SURPLUS—Continued

| | | | | |
|---|---|---|---|---|
| 13. Unallowable deductions:—Continued. | | | | |
| (*f*) Other unallowable deductions (to be detailed): | | | | |
| (1) | | | | |
| (2) | | | | |
| (3) | | | | |
| 14. Total of Line 13 | | | | |
| 15. Dividends paid during the taxable year, whether in cash, stock, or other property: | | | | |
| (*a*) Date paid..... Character..... | | | | |
| (*b*) Date paid..... Character..... | | | | |
| (*c*) Date paid..... Character..... | | | | |
| (*d*) Date paid..... Character..... | | | | |
| 16. Other debits to surplus (to be detailed): | | | | |
| (*a*) | | | | |
| (*b*) | | | | |
| (*c*) | | | | |
| 17. Total of Lines 15 and 16 | | | | |

## BALANCE SHEET

A copy of the balance sheet as of the last day of the taxable year should be attached hereto.

## WORKING PAPERS

Every corporation should preserve, available for inspection by an officer of the Bureau of Internal Revenue, working papers showing the balance in each account on the corporation's books that were used in preparing the return.

## INFORMATION AT THE SOURCE

Every corporation making payments of salaries, wages, interest, rent, commissions, or other fixed or determinable income of ₱2,000 or more during the year, to any individual, fiduciary, or partnership, is required to make a true and accurate return to the Collector of Internal Revenue, showing the amount of such payments and the name and address of the recipient. It is also required to render a return of its payments of profits or dividends to stockholders during the year, stating the number and class of shares owned by such stockholder, and the date and amount of each dividend payment. Such returns of information must be attached hereto.



## LIABILITY FOR FILING RETURNS

*Corporations Generally.*—Every domestic or resident corporation, joint-stock company, association, etc. not specifically exempted by Section 11 of Act No. 2833, as amended by Acts Nos. 2926, 3026, 3605, and 3761, whether or not having any net income, must file a retun.

*Foreign Corporations.*—Every foreign corporation doing business in or having income from sources within the Philippine Islands must make a return of income on this Form. The return should be filed with the treasurer of the province in which is located its principal place of business, or if it have no office of any kind or agency in the Philippine Islands, then with the Collector of Internal Revenue, Manila.

TIME AND PLACE FOR FILING

The return must be filed with the treasurer of the province in which the corporation's principal office is located on or before March 1, if the return is made on the basis of the calendar year. If the return is made on the basis of a fiscal year, it must be filed within sixty days after the close of such fiscal year. In the City of Manila all returns must be filed with the Collector of Internal Revenue.

The Collector may grant a reasonable extension of time for filing a return, if application therefor is made before the date prescribed by law for filing such return, whenever in his judgment good cause exists.

SIGNATURES AND VERIFICATION

The return shall be sworn to by the president, vice-president, or other principal officer, and by the treasurer or assistant treasurer. The return of a foreign corporation having an agent in the Philippine Islands shall be sworn to by such agent. If receivers, trustees, or assignees are operating the property or business of the corporation, such receivers, trustees or assignees shall execute the return for such corporation under oath.

RECORDS AND BOOKS OF ACCOUNT

With reference to the necessity of keeping records or books of account, the attention of all corporations, companies, partnerships and associations is drawn to the provisions of Act No. 3292 known as the Bookkeeping Law and to Regulations No. 58 of the Department of Finance.

MANILA, *August 28, 1933.*

I HEREBY CERTIFY that this is a true copy of the original Income Tax Return of National City Bank of New York for the year 1931, on file in the Bureau of Internal Revenue and that I am the legal custodian of the income tax records of said Bureau.

[SEAL]

(Sgd.) CRISPIN LLAMADO
*Chief, Income Tax Division*
*Bureau of Internal Revenue*

**Exhibit H**

B. I. R. FORM No. 425.
NEW B. I. R. FORM No. 17.09

(DUPLICATE)

OFFICIAL RECEIPT

The Government of the Philippine Islands
Department of Finance
Bureau of Internal Revenue

No. 146402

## INCOME TAX RECEIPT

Assessment No. 30708–31

NATIONAL CITY BANK OF NEW YORK

.....
(Taxpayer's name)

.....
(Address)

Manila

.....
(Agent's name)

.....
(Address)

Taxable period covered by this receipt from .....
....., 192.....

to ..... Dec. 25 ....., 1931

| | |
|---|---|
| Tax due as per return | ₱15,566.15 |
| Additional tax due as per | ..... |
| 100 per cent surcharge | ..... |
| 50 per cent surcharge | ..... |

| | |
|---|---|
| Interest 1 per cent per month | ..... |
| Compromise | ..... |
| Total | ₱15,566.15 |

Date *June 3, 1932*

Received the sum of fifteen thousand five hundred sixty-six pesos and fifteen centavos, as specified above.

VICTOR ALFONSO
*City Treasurer*

JUAN POSADAS, Jr.
*Collector of Internal Revenue*

"By (Sgd.) ?
*Internal Revenue Officer*

Station ..... Manila ....., P. I.

NOTE.—Payment of the tax indicated above is not conclusive as to ultimate tax liability. 4—49.

---

NOTICE

This receipt should be executed in triplicate by inserting carbon papers between the copies. The original is to be delivered to the taxpayer, the duplicate forwarded to the Bureau of Internal Revenue with the monthly report of collections of the deputy provincial treasurer, and the triplicate retained by the collecting officer for his permanent record.

Taxpayers are cautioned to see that the amount paid by them corresponds to the figures appearing on this receipt.

MANILA, *August 29, 1933*

I hereby certify that this is a true copy of the original on file in the Bureau of Internal Revenue and that I am the legal custodian of the Income Tax Records of said Bureau.

(Sgd.) CRISPIN LLAMADO
*Chief, Income Tax Division*
*Bureau of Internal Revenue*

**Exhibit I**

B. I. R. No. 556
NEW B. I. R. No. 25.06 COUPON

MISCELLANEOUS TAX-RECEIPT No. 7999549

Schedule G Paragraph 1

Assessment No. 3

GOVERNMENT OF THE PHILIPPINE ISLANDS

INTERNAL REVENUE TAX

Province: ..... Manila. .....
Municipality: .....
Taxpayer's name: The National City Bank of New York.
.....
Locality: .....

| | |
|---|---|
| Average Deposit Tax | ₱60,543.79 |
| Local Foreign Bank Short-tax | 675.64 |
| Capital employed | |
| Amount paid Compromise | 16,104.68 |
| Penalty | |
| Total | 11,324.11 |

Remarks: for the six months ending June 30, 1931. Paid under protest.

.....
.....
.....
.....

The above paym't cover the { Tax / Short-tax / Compromise / penalty imposed } on tax receipt

Above mentioned, for ..... Quarter of 193.....
Date of payment October 27, 1931.

JUAN POSADAS
*Collector of Internal Revenue*

By (Sgd.) ? .....
(Signature of Internal Revenue Officer)

MANILA, *August 29, 19?*

I hereby certify that this is a true copy of the original on file in the Bureau of Internal Revenue and that I am the legal custodian of the income-tax records of said Bureau.

(Sgd.) CRISPIN LLAMADO
*Chief, Income Tax Division*
*Bureau of Internal Revenue*

---

**Exhibit J**

THE NATIONAL CITY BANK OF NEW YORK
ESTABLISHED 1912

MANILA, P. I., *October 23rd, 1931*

The COLLECTOR OF INTERNAL REVENUE,
Manila, P. I.

We enclose our cheque for ₱77,324.11 in payment of Deposit and Capital Taxes for the period January/June 1931.

This payment is made under protest and duress and solely to avoid penalties, fines and forfeitures.

The grounds of such protest are as follows:

(1) That The National City Bank of New York is a national banking association duly organized under the United States National Banking Act and is an agency of the United States created under its laws to promote the fiscal policies of the United States.

(2) That The National City Bank of New York has been duly authorized by the Federal Reserve Board to establish a branch in the Philippine Islands, and is

now operating the same under the provisions of the United States Federal Reserve Act.

(3) That no estate, territory or possession of the United States or any subdivision thereof has the power to tax national banks except as Congress expressly permits; that no such power has been granted to the Philippine Government.

(4) That under the provisions of the National Banking Act (sec. 548, Title 12, U. S. Code) each state may tax national banking associations in any one of four forms but the imposition of any one of such forms shall be in lieu of the others except that in the case of a tax upon net income, individuals may be taxed upon dividends from national banking associations if the law of the state provides for such a tax upon all business corporations and dividends therefrom.

(5) That the Philippine Islands imposes a tax upon net income and is therefore without power to impose any capital, deposit or other tax of any kind upon such national banking association.

Yours very truly,

(Sgd.) F. C. BAILEY
*Pro-Manager*

MANILA, *August 29, 1933*

I hereby certify that this is a true copy of the original on file in the Bureau of Internal Revenue and that I am the legal custodian of the income tax records of said Bureau.

(Sgd.) CRISPIN LLAMADO
*Chief, Income Tax Division*
*Bureau of Internal Revenue*

## Exhibit K

### CAPITAL TAX JANUARY/JUNE 1931

| | |
|---|---|
| December 1930 Capital | $110,000,000.00 |
| Surplus | 90,000,000.00 |
| Undivided profit | 24,554,298.54 |
| | $224,554,298.54 |
| Dividend paid March 31 | $4,510,000.00 |
| January capital | $224,554,298.54 |
| February | 226,336,015.78 |
| March | 228,117,733.02 |
| April | 225,389,450.26 |
| May | 227,171,167.50 |
| June | 228,952,884.74 |
| | $1,360,521,549.84 |
| Average | $226,753,591.64 |
| | $453,507,183.28 |
| Corporation profits | $10,690,303.41 |
| | ₱21,380,606.82 |
| Average profit | $1,781,717.24 |
| Manila and Cebu profits | $151,851.11 |
| | ₱303,702.22 |
| January capital | $224,554,298.54 |
| January profit | 1,781,717.24 |
| February capital | $226,336,015.78 |
| February profit | 1,781,717.24 |
| March capital | $228,117,733.02 |
| March profit | 1,781,717.24 |
| | $229,899,450.26 |
| Less dividend | 4,510,000.00 |
| April capital | $225,389,450.26 |
| April profit | 1,781,717.24 |

## Exhibit K—Continued

### CAPITAL TAX JANUARY/JUNE 1931—Continued

| | |
|---|---|
| May capital | $227,171,167.50 |
| May profit | 1,781,717.24 |
| June capital | $228,952,884.74 |

Average capital ..... 453,507,183.28
Our profit ..... 303,702.22

90701436656
90701436656
90701436656
3174550282960
136052154984
1360521549840

21,380,606.82 : 1377311383480828816 : 6,441,872.28
12828364092

944728[illegible]28
8552242728

8952547000
8552242728

4003042728
2138060682

18649820462
17104485456

15453350068
14966424774

4869252948
4276121364

5931315841
4276121364

1655194477

¼ % 16,104.68

# EXHIBIT L

Form 2130—Call No. 329
TREASURY DEPARTMENT
OFFICE OF THE COMPTROLLER OF THE CURRENCY
STATISTICAL—REVISED February, 1931
Reserve District No. .....
Charter No. .....

## PLEASE READ ACCOMPANYING INSTRUCTIONS CAREFULLY

Every blank space and schedule must be filled in. Where there are no figures to report, the word "None" must be written or stamped. Printed items on this blank must not be scratched or amended in any manner. Any amounts which can not be properly included in the printed items must be entered under "Other Assets" or "Other Liabilities."

Report of condition of the National City Bank of New York of Manila, P. I., in the State of ....., at the close of business on June 30th, 1931.

| | Insert Word "None" If no Amount Is to be Entered at Right | Dollars |
|---|---|---|
| **RESOURCES** | | |
| 1. Loans and discounts (must agree with Schedule E) | | 8,210,765.45 |
| 2. Overdrafts | | 15,709.02 |
| 3. United States Government securities owned (must agree with Schedule F) | None | |
| 4. Other bonds, stocks, and securities owned (must agree with Schedule G) | | 568,539.08 |
| 5. Customers' liability on account of acceptances executed by this bank and by other banks for account of this bank (exclusive of acceptances of this bank purchased or discounted, included in loans and discounts, and of anticipations by customers | None | |
| 6. Banking house $28,041.43 Furniture and fixtures $ | | 28,041.43 |
| 7. Real estate owned other than banking house | | .50 |
| 8. Reserve with Federal Reserve Bank | None | |
| 9. Cash and due from banks (must agree with Schedule I) | | 1,171,506.52 |
| 10. Outside checks and other cash items | | 65,553.78 |
| 11. Redemption fund with U. S. Treasurer and due from U. S. Treasurer | None | |
| 12. Acceptances of other banks and bills of exchange or drafts sold with indorsement of this bank (must agree with per contra item 27) | | 1,078,412.84 |

| | Insert Word "None" If No Amount Is to Be Entered At Right | Dollars |
|---|---|---|
| **RESOURCES—Continued.** | | |
| 13. Securities borrowed (must agree with per contra item 30) | None | |
| 14. Other assets (must agree with Schedule M) | | 201,681.69 |
| TOTAL | | 11,340,210.31 |
| **LIABILITIES** | | |
| 15. Capital stock paid in | None | |
| 16. Surplus | None | |
| 17. Undivided profits—net | None | |
| 18. Reserves for dividends, contingencies, etc | None | |
| 19. Reserves for interest, taxes, and other expenses accrued and unpaid | | 132,970.41 |
| 20. Circulating notes outstanding | None | |
| 21. Due to banks, including certified and cashiers' checks, and cash letters of credit and travelers' checks outstanding (must agree with Schedule J) | | 638,050.28 |
| 22. Demand deposits (except bank deposits) subject to reserve, including deposits due in 30 days or less or subject to less than 30 days' notice (must agree with Schedule K) | | 3,374,170.60 |

| | | | |
|---|---|---|---|
| 23. Time deposits (deposits payable after 30 days or subject to 30 days' or more notice) and Postal Savings deposits (must agree with Schedule L) | | | 5,287,569.48 |
| 24. U. S. deposits (other than Postal Savings), including war-loan deposit account and deposits of United States disbursing officers | | None | |
| 25. Agreements to repurchase U. S. Government or other securities sold | | None | |
| 26. Bills payable and rediscounts (must agree with Schedule H) | | None | |
| 27. Acceptances of other banks and bills of exchange or drafts sold with indorsements of this bank (must agree with per contra item 12) | | | 1,078,412.84 |
| 28. (a) Acceptances executed by this bank for customers and to furnish dollar exchange $ | | None | |
| (b) Less acceptances of this bank purchased or discounted and included in "Loans and discounts" | | None | |
| 29. Acceptances executed by other banks for account of this bank | | None | |
| 30. Securities borrowed (must agree with per contra item 13) | | None | |
| 31. Other liabilities (must agree with Schedule N) | | | 429,036.70 |
| TOTAL | | | 11,340,210.81 |

I, ..... of the above-named bank, do solemnly swear that the above statement is
(Cashier or President)

true, and that the SCHEDULES attached hereto and those on back of this report fully and correctly represent the true state of the several matters therein contained and set forth, to the best of my knowledge and belief.

....., *Cashier*

Correct.—Attest:

.....
.....
..... } *Directors*

NOTE.—This report must be sworn to by the President or Cashier, attested by not less than three Directors, other than signing officer, and forwarded to the Comptroller of the Currency within five days after receipt of request. (See section 5211, Revised Statutes.)

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Place for official seal to be affixed by officer before whom acknowledged. See Act February 26, 1881. Notary must not be an officer or director of the bank.

State of ....., County of .....

Sworn to and subscribed before me this ..... day of. ....., 1932, and I hereby certify that I am not an officer or a director of this bank.

My commission expires ..... ....., *Notary Public*

SCHEDULE A—NAMES OF OFFICERS AND DIRECTORS; LIABILITIES, IF ANY, AND SHARES OWNED

Par value of stock, per share, $..... (Enter the names of all officers and directors, whether or not they are indebted to bank).

Number of shares of stock issued .....

| 1 Name of Officers and Directors | 2 Official Title | 3 If Officer is Also a Director Indicate by "D" | 4 Liability (Individual or Firm) as Payers | 5 Liability (Individual or Firm) as Indorsers or Guarantors | 6 Checks and Cash Items | 7 Overdrafts | 8 Number of Shares of Stock of this Bank Owned |
|---|---|---|---|---|---|---|---|
| ..... | ..... | ..... | $ ..... | $ ..... | $ ..... | $ ..... | ..... |
| ..... | ..... | ..... | ..... | ..... | ..... | ..... | ..... |
| ..... | ..... | ..... | ..... | ..... | ..... | ..... | ..... |
| ..... | ..... | ..... | ..... | ..... | ..... | ..... | ..... |
| Refer to Head Office Report ..... | ..... | ..... | ..... | ..... | ..... | ..... | ..... |
| ..... | ..... | ..... | ..... | ..... | ..... | ..... | ..... |
| ..... | ..... | ..... | ..... | ..... | ..... | ..... | ..... |
| ..... | ..... | ..... | ..... | ..... | ..... | ..... | ..... |
| ..... | ..... | ..... | ..... | ..... | ..... | ..... | ..... |
| TOTAL ..... | ..... | ..... | ..... | ..... | ..... | ..... | ..... |

SCHEDULE B—LOANS EXCEEDING THE LIMIT PRESCRIBED BY SECTION 5200 OF THE REVISED STATUTES (renewed commercial paper and overdrafts must be considered as loans in arriving at a borrower's total liability); also balances due from nonmember banks exceeding 10 per cent of this bank's paid-up capital and surplus.

| NAME | FULL AMOUNT OF LOAN OR BALANCE |
|---|---|
| | $ |
| | |
| None. | |
| | |
| | |
| | |
| | |

## SCHEDULE C—CONTINGENT LIABILITIES (not included among Resources and Liabilities)

| | |
|---|---|
| 1. Commercial letters of credit issued, but not used | $1,639,087.15 |
| 2. Travelers' letters of credit issued under guaranty or deposit of security, but not used | 342,649.18 |
| 3. Other credits opened for customers, but not used | |
| 4. Other contingent liabilities | |
| TOTAL | 1,981,736.33 |

## SCHEDULE D—BRANCHES AND BRANCH OFFICES

| Refer to Head Office Report— | NUMBER |
|---|---|
| 1. Within corporate limits of head office city | |
| 2. Elsewhere in United States | |
| 3. In foreign countries | |
| TOTAL | |

## SCHEDULE E—LOANS AND DISCOUNTS (including rediscounts)

| | Insert Word "NONE" If No Amount Is to be Entered At Right | Dollars |
|---|---|---|
| 1. Acceptances of other banks, payable in United States, owned by this bank | None | |
| 2. Notes, bills, acceptances, and other instruments evidencing loans, payable in foreign countries | | 1,142,308.28 |
| 3. Commercial paper bought in open market | None | |
| 4. Loans to banks and trust companies: | | |
| (a) On securities (U. S. Government securities and securities of the kinds listed in Schedule G) | None | |
| (b) All other | None | |
| 5. Loans on securities (i. e., loans secured by U. S. Government securities and securities of the kinds listed in Schedule G)—EXCLUSIVE of such loans to banks (Item 4a above): | | |
| (a) To brokers and dealers in securities in New York City | None | |
| (b) To brokers and dealers in securities outside New York City | None | |
| (c) To others | | 2,420,594.92 |
| 6. Real estate loans, mortgages, deeds of trust, and other liens on real estate: | | |
| (a) On farm land | None | |
| (b) On other real estate | | 2,144,742.90 |

| | | |
|---|---|---|
| 7. All other loans, including banks' own acceptances purchased or discounted | | 2,503,119.35 |
| 8. All other loans | | |
| TOTAL LOANS AND DISCOUNTS (must agree with Item 1 of "Resources") | | 8,210,765.45 |
| MEMORANDA: | | |
| 9. Loans secured by U. S. Government obligations included in Items 4 and 5 of this schedule | | |
| 10. Total loans eligible for rediscount with Federal Reserve Bank (including eligible paper now under rediscount, if any) (see Federal Reserve Board Regulation A) | | |

SCHEDULE F—UNITED STATES GOVERNMENT SECURITIES OWNED (including securities sold under repurchase agreement)

| | | |
|---|---|---|
| 1. Bonds (including bonds deposited to secure circulation) | None | |
| 2. Treasury notes | None | |
| 3. Certificate of indebtedness | None | |
| 4. Treasury bills | None | |
| TOTAL U. S. GOVERNMENT SECURITIES OWNED (must agree with Item 3 of "Resources") | | |

## SCHEDULE G—OTHER BONDS, STOCKS, AND SECURITIES OWNED (including securities sold under repurchase agreement)

| | Insert Word "NONE" If No Amount Is to be Entered At Right | Dollars |
|---|---|---|
| 1. Domestic securities: | | |
| (a) State, county, and municipal bonds | None | |
| (b) Railroad bonds | None | |
| (c) Other public service corporation bonds | None | |
| (d) All other bonds | None | |
| (e) Stock of Federal Reserve Bank | None | |
| (f) Stock of other corporations | None | |
| (g) Collateral trust and other corporation notes | None | |
| (h) Municipal warrants | None | |
| (i) All other, including claims, judgments, etc | None | |
| 2. Foreign securities: | | |
| (a) Government bonds | None | |
| (b) Other foreign securities, including bonds of municipalities, etc | | 568,539.08 |
| TOTAL OTHER BONDS, STOCKS, AND SECURITIES OWNED (must agree with Item 4 of "Resources") | | |

## SCHEDULE H—BILLS PAYABLE AND REDISCOUNTS

| | | |
|---|---|---|
| **BILLS PAYABLE** | | |
| 1. Advances received on this bank's own promissory note: | | |
| (*a*) From Federal Reserve Bank | None | |
| (*b*) From other banks and trust companies | None | |
| 2. Certificates of deposit issued to other banks and trust companies for money borrowed | None | |
| 3. Advances received on other instruments given for the purpose of borrowing money | None | |
| **REDISCOUNTS** | | |
| 4. Notes and bills rediscounted, including notes and bills sold under repurchase agreement or with recourse to this bank: | | |
| (*a*) With Federal Reserve Bank | None | |
| (*b*) With other banks, trust companies, etc | None | |
| TOTAL BILLS PAYABLE AND REDISCOUNTS (must agree with Item 26 of "Liabilities") | | |

SCHEDULE I—CASH AND DUE FROM BANKS (Do not report as "Due from Banks" any amounts not subject to withdrawal without notice)

| | | Insert Word "NONE" If No Amount Is to be Entered At Right | Dollars |
|---|---|---|---|
| 1. United States gold coin | | | 54,444.41 |
| 2. Gold certificates | | None | |
| 3. All other cash in vault | | | 842,974.97 |
| Subtotal, Items 1 to 3 | $897,419.38 | (Amount not to be extended) | |
| 4. Items with Federal Reserve Bank in process of collection | | None | |
| 5. Due from banks and trust companies in Central Reserve cities: | | | |
| (a) New York City | | None | |
| (b) Chicago | | None | |
| 6. Due from banks and trust companies elsewhere in the United States | | None | |
| 7. Exchanges for clearing house and other checks on local banks | | None | |
| 8. Balances payable in dollars due from foreign branches of other American banks | | None | |
| Subtotal, Items 4 to 8 | $ | (Amount not to be extended) | |
| 9. Due from banks and bankers in foreign countries (exclusive of amounts reported in Item 8) | | | 274,087.14 |
| Total Cash and Due from Banks (must agree with Item 9 of "Resources") | | | 1,171,506.52 |

SCHEDULE J—DUE TO BANKS (including certified and cashiers' checks, and cash letters of credit and travelers' checks outstanding)

| | | |
|---|---|---|
| 1. Due to Federal Reserve Bank (deferred credits) | None | |
| 2. Due to other banks and trust companies in United States | | 54,421.11 |
| 3. Due to banks in foreign countries | | 462,585.68 |
| 4. Certified and cashiers' checks, including dividend checks, outstanding | | 15,253.65 |
| 5. Letters of credit and travellers' checks sold for cash and outstanding | | 105,789.84 |
| TOTAL (must agree with Item 21 of "Liabilities") | | 638,050.28 |

SCHEDULE K—DEMAND DEPOSITS (EXCEPT BANK DEPOSITS) SUBJECT TO RESERVE (including deposits due in 30 days or less or subject to less than 30 days' notice)

| | | |
|---|---|---|
| 1. Individual deposits subject to check | | 3,137,440.86 |
| 2. Certificates of deposit (other than for money borrowed) | | 137,988.67 |
| 3. State, county, and municipal deposits | None | |
| 4. Other demand deposits | | 98,741.07 |
| TOTAL DEMAND DEPOSITS (must agree with Item 22 of "Liabilities") | | 3,374,170.60 |

SCHEDULE L—TIME DEPOSITS (deposits payable after 30 days or subject to 30 days' or more notice, as defined in Federal Reserve Board Regulation D; and Postal Savings)

| | | Insert Word "NONE" If No Amount Is to be Entered At Right | Dollars |
|---|---|---|---|
| 1. State, county, and municipal deposits | | None | |
| 2. Deposits of other banks and trust companies located in: | | | |
| (a) United States | | None | |
| (b) Foreign countries | | None | |
| 3. Other time deposits: | | | |
| (a) Deposits evidenced by savings pass books | number of accounts 9851 | | 5,291,010.53 |
| (b) Certificates of deposit (other than for money borrowed) | | | 396,558.95 |
| (c) Time deposits, open accounts; Christmas savings accounts, etc. | | None | |
| 4. Postal savings deposits | | None | |
| TOTAL TIME DEPOSITS (must agree with Item 23 of "Liabilities") | | | 5,687,569.48 |

| SCHEDULE M—ITEMIZED STATEMENT OF "OTHER ASSETS" | | SCHEDULE N—ITEMIZED STATEMENT OF "OTHER LIABILITIES" | |
|---|---|---|---|
| Foreign Branches Our A/c | °137,080.33 | Head Office Their A/c | $5,416.97 |
| Foreign Branches Their A/c O/D | 325.27 | Head Office Our A/c O/D | 79,548.07 |
| Accounts Receivable | 17,314.51 | Foreign Branches Their A/c | 37,606.98 |
| Prepaid Expenses | 14,086.55 | Foreign Branches Our A/c O/D | 88,131.12 |
| Interest Earned not Collected | 15,785.53 | Discount and Interest Collected not Earned | 13,930.69 |
| Net Operating Loss | 17,089.50 | Local and Domestic Branches Their A/c | 204,402.87 |
| | | | |
| | | | |
| | | | |
| TOTAL (must agree with Item 14 of "Resources") | 201,681.69 | TOTAL (must agree with Item 31 of "Liabilities") | 429,036.70 |

On October 16, 1933, the trial Judge, after a full consideration of the evidence, oral and documentary, presented by both parties, rendered the following decision:

[CAPTION OMITTED]

DECISION

The issue in this case is one of law. On January 23, 1930, the National City Bank of New York, an association organized and existing under the National Bank Act of the United States (Title 12, Chapter 2, U. S. C. A., Exhibit A), obtained leave from the Federal Reserve Board to open up branch offices in Manila and Cebu, Philippine Islands (Exhibit B). That same year, on the 19th of March, it filed a copy of the articles of incorporation, by-laws, and the order granting the permission spoken of, with the Bureau of Commerce (Exhibits A, B, and C). When the bank began business here, the record does not show, nor is it to the purpose to inquire. The parties are agreed that on October 23, 1931, the Collector of Internal Revenue collected ₱77,324.11 from the National City Bank by way of taxes upon deposits and capital for the first semester of 1931 (Complaint and Answer). The sum was paid under protest (Exhibit J). Income tax was subsequently taken up for the same period, but no question has been raised upon it (Exhibits G and H). The present action, then, was brought to recover the amount of ₱77,324.11 with interest and costs of suit.

The plaintiff produced a number of exhibits and put in witnesses to show the relations between the local branches and the main office. Apart from this, the argument was carried on in writing.

The National City Bank of New York contends that being an instrumentality of the United States Govern-

ment it can not be taxed here except by express permission of Congress. Now the only permission given, allows of taxation upon capital or income or profits, but not any two, still less all three of these together. (Section 548, United States Code, Annotated.)

The defendant meets the issue as follows:

That the instrumentalities of the Federal Government are not taxable except by permission of Congress, it does not deny, but maintains that the rule applied only to states proper, because then the question of supremacy arises between state and federal government, each state government deriving its power not from the central government but from the people of the state; whereas the local government is a creature of the federal government. This puts the problem in a false light. The true basis of the exemption may be discovered by inquiring not whence the taxing power is derived but how that power may be used; the reason is, if this exemption did not exist, an inferior government might tax away the means selected by the federal government to exercise its functions. (See Cooley on Taxation, p. 606, and cases cited.) And this mischief the Philippine Government can work, just as well as any state government. This the defendant partly acknowledges, saying apropos of national banks that laws tending to impair or destroy their efficiency as federal agencies are prohibited, although he goes on to say that the local branches of the National City Bank of New York are not federal agencies and hence taxes imposed on them are not prohibited.

This leads us on the next point whereby, although the defendant does not deny that the National City Bank of New York is a national bank, and therefore an instrumentality of the federal government, he con-

tends that the same thing cannot be said of its local branches. His reasoning runs thus: national banks are instrumentalities of the federal government only because, and so far as, they are employed as depositaries and fiscal agents of that government; but, the local branches of the National City Bank of New York are not so employed; therefore, etc. This ignores the fact (transcript; stenographic notes, pp. 2–7, 10–11) that the local branches of the National City Bank of New York are branches, and treats them independently, as if they were different organizations. To support this stand the defendant cites Pan-American Bank & Trust Co. *versus* National City Bank of New York (6 Fed. 762, 2nd ed.), to the effect that a national bank and its foreign branch are separate entities as regards business transactions between them. But this is nothing to the point, for although a man's arm may in the same manner be contrasted with his body, yet all his limbs plus his head and trunk make but one and the same man. Even so, although in transactions between them, a branch office and the main office are of necessity distinct and even opposing members, yet as regards outsiders, main and branch offices make up but one and the same corporation, one and the same federal instrumentality.

Finally, the defendant denies that the only permission to tax national bank which Congress has given and which applies here is section 548, U. S. C. A. This section, in fact, the defendant claims, is not applicable to the Philippines because it only uses the word "State" and there is nothing to show that this word includes an unincorporated territory "with the status of the Philippine Government." This difficulty is of little importance in view of the following ruling

of our Supreme Court in Thirty-First Infantry Post Exchange *versus* Posadas (54 Phil., 867):

> "The basic rule that without Congressional consent no Federal agency or instrumentality can be taxed by State authority, together with its qualifications, applies not only to the States of the American Union, but also to unincorporated territories with the status of the Government of the Philippine Islands."

The second reason why the defendant maintains that the section named does not apply to the Philippines is found in section 5 of the Jones Law, which provides that statutory laws of the United States subsequently enacted shall not apply to the Philippine Islands, unless specifically provided therein. In view of the doctrine just quoted, the only result of the questioned section's not applying here would be that no tax whatsoever could be imposed upon the plaintiff, since the only permission granted for the purpose, does not apply; and not only the deposit and capital taxes were wrongfully levied, but the income tax as well. The case would end here, then, were it not that the defendant claims there is another section granting the requisite permission, to wit, section 627, U. S. C. A. But the very first sentence of this section shows it to be clearly inapplicable:

> "Any corporation organized under the provisions of this subdivision of chapter 6 shall be subject to tax by the State within which its home office is located in the same manner and to the same extent as other corporations organized under the laws of that State which are transacting a similar character of business."

Chapter 6 contains two subdivisions, the first beginning with section 601 and entitled "Establishment by National Banks of Foreign Branches and Investments in Bank Doing Foreign Business," and the second beginning with section 611 and entitled "Organization of Corporations to do foreign Banking." The local branches of the National City Bank of New York were evidently established under the first subdivision, and section 627, invoked by the defendant, applies only to the second subdivision, i. e., corporations organized herein the Philippines for the purpose of doing foreign banking. Therefore, section 627 does not authorize the application of section 1499 of the Administrative Code to the plaintiff.

Considering, then, that the taxes collected from the plaintiff were taken up by virtue of the express permission granted the Philippine Government in section 548, U. S. C. A., it follows in the view of paragraph I (*a*) thereof ("the imposition by said State of any one of the above three forms of taxation shall be in lieu of the others"—"the several States may tax said shares, or include dividends derived therefrom in the taxable income of an owner or holder thereof, or tax the income of such associations"), that only one of these may be levied. As to which tax will stand, it is well known that the taxes paid under protest were levied, assessed, and collected before the income tax, which was not paid under protest: the capital and deposit taxes were authorized by Act No. 2711, whereas the income tax was established about two years later by Act No. 2833. On the other hand, section 548, U. S. C. A., does not authorize the levy of deposit taxes. Consequently, only capital taxes may be imposed upon the plaintiff. The deposit taxes paid under

protest amount to ₱61,219.43 according to Exhibit F, and this sum ought to be returned to the plaintiff, without interest (section 1579, Administrative Code, as amended) or costs.

So ordered.

The attorney for the defendant was notified of the foregoing decision on October 25, 1933, and on November 7, 1933, he filed a motion for a new trial, which reads as follows:

[CAPTION OMITTED]

MOTION FOR A NEW TRIAL

Comes now the defendant by the undersigned Solicitor-General and moves this Honorable Court to set aside the decision rendered in the above-entitled case on October 16, 1933, and to grant a new trial therein, for the following grounds:

1. That said decision is contrary to law.

2. That the evidence presented in this case is insufficient to justify said decision.

The foregoing motion for new trial was denied by the court in an order dated November 11, 1933, copy of which was received by defendant on November 14, 1933, which reads as follows:

[CAPTION OMITTED]

ORDER

The decision entered in this case being in accordance with law and the weight of the evidence presented in the trial of this case,

The petition for a new trial filed by the attorney for the defendant is denied.

So ordered.

On November 16, 1933, the defendant, by his attorney, filed with the court an exception and notice of intention to appeal, which reads as follows:

[CAPTION OMITTED]

EXCEPTION AND NOTICE OF INTENTION TO PRESENT A BILL OF EXCEPTIONS

Comes now the defendant in the above-entitled case by the undersigned Solicitor-General and respectfully excepts to the order of this Honorable Court dated November 11, 1933, notice of which was received on November 14, 1933, denying his motion for a new trial, and hereby gives notice of his intention to present a bill of exceptions in the said case.

The plaintiff was notified of the foregoing decision on October 26, 1933, and on November 15, 1933, it filed an exception and motion for a new trial, which reads as follows:

[CAPTION OMITTED]

EXCEPTION AND MOTION FOR NEW TRIAL

Comes now the plaintiff, by its undersigned attorneys, and hereby excepts to the decision of this Honorable Court in the above-entitled case, dated October 16, 1933, denying plaintiff's right to recover capital taxes paid under protest, and prays that the said decision be set aside, and a new trial granted on the following ground:

1. That the said decision is contrary to law.

The foregoing motion for a new trial presented by the plaintiff was denied by the court in an order dated November 18, 1933, copy of which was received by the

plaintiff on November 21, 1933, which reads as follows:

[CAPTION OMITTED]

ORDER

The decision entered in this case being in accordance with law and the weight of the evidence,

The petition for a new trial filed by the attorneys for the plaintiff is denied.

So ordered.

On November 29, 1933, the plaintiff, by its attorneys, filed with the court an exception and notice of intention to appeal, which reads as follows:

[CAPTION OMITTED]

EXCEPTION AND NOTICE OF APPEAL

Comes now the plaintiff, by its undersigned attorneys, and makes of record its exception to the order of this Honorable Court dated November 18, 1933, denying its motion for a new trial, notice of which order was received by the undersigned attorneys on November 21, 1933, and hereby announces its intention to present the corresponding bill of exceptions.

The bill of exceptions presented by the appellant was approved by the trial court in its order of November 25, 1933, which reads as follows:

[CAPTION OMITTED]

ORDER

No objection having been presented,

The bill of exceptions presented by the attorney for the defendant is hereby approved and certified as correct, and the Clerk of this Court is hereby ordered to forward the same to the Honorable Supreme Court of

these Islands, together with all the evidence, oral and documentary, presented at the trial, for the purposes of the appeal interposed by the said defendant.

So ordered.

Manila, P. I., November 25, 1933.

MARIANO A. ALBERT, *Judge*

The bill of exceptions presented by the plaintiff was approved by the trial court in its order of December 2, 1933, which reads as follows:

[CAPTION OMITTED]

ORDER

No objection having been presented,

The bill of exceptions presented by the attorneys for the plaintiff is hereby approved and certified as correct, and

The Clerk of this Court is hereby ordered to forward the same to the Honorable Supreme Court of these Islands, together with all the evidence, oral and documentary, presented at the trial, for the purposes of the appeal interposed by the plaintiff.

So ordered.

Manila, P. I., December 2, 1933.

MARIANO A. ALBERT, *Judge*

The appeal in this case was docketed in the Supreme Court of the Philippine Islands on December 27, 1933, and it has been given the docket number of G. R. No. 41032.

## PROCEEDINGS IN THE SUPREME COURT OF THE PHILIPPINE ISLANDS

This case, now bearing G. R. No. 41032, was submitted to the Supreme Court of the Philippine Islands

upon the briefs filed by the parties. The attorneys for the plaintiff-appellant made the following assignment of errors:

[CAPTION OMITTED]

ASSIGNMENT OF ERRORS

I

The trial court erred in refusing to give plaintiff judgment for the amount of the capital tax paid under protest.

II

The trial court erred in denying plaintiff's motion for new trial.

Manila, March 1, 1934.

Respectfully submitted,

ROSS, LAWRENCE & SELPH

By ROBERT JANDA
*Attorneys for Plaintiff*
*414 National City Bank Building, Manila*

The attorney for the defendant-appellant made the following assignment of errors:

[CAPTION OMITTED]

ASSIGNMENT OF ERRORS

I

The trial court erred in holding that the branch of the National City Bank of New York in Manila, Philippine Islands, is an instrumentality of the United States Government.

II

The trial court erred in holding that the branch of the National City Bank of New York in Manila, Philippine Islands, is only subject to the payment of taxes on its capital and not to the payment of taxes on its deposits also as provided for in section 1499 of Act No. 2711 (The Administrative Code), as amended.

III

The trial court erred in ordering the defendant to return to the plaintiff the amount of P61,219.43, which represents the tax on its deposits for the first half of the year 1931, paid under protest by the said plaintiff to the defendant.

IV

The trial court erred in denying defendant's motion for a new trial.

Respectfully submitted.

SERAFIN P. HILADO
*Solicitor-General*
*Attorney for Defendant-Appellant*

Manila, February 21, 1934.

After hearing the argument of both parties, the Supreme Court of the Philippine Islands rendered in this case, on September 21, 1934, the following decision:

[CAPTION OMITTED]

DECISION

BUTTE, *J.*:

Under section 1499 of the Administrative Code, the defendant Collector of Internal Revenue of the Philip-

pine Islands assessed against the National City Bank of New York as capital and deposit taxes for the first half of the year 1931 the sum of P77,324.11. On October 23, 1931, the bank paid said taxes under protest. The grounds of the protest were stated as follows:

"1. That the National City Bank of New York is a national banking association duly organized under the United States National Banking Act and is an agency of the United States created under its laws to promote the fiscal policies of the United States.

"2. That the National City Bank of New York has been duly authorized by the Federal Reserve Board to establish a branch in the Philippine Islands, and is now operating the same under the provisions of the United States Federal Reserve Act.

"3. That no state, territory or possession of the United States or any subdivision thereof has the power to tax national banks except as Congress expressly permits; that no such power has been granted to the Philippine Government.

"4. That under the provisions of the National Banking Act (sec. 548, Title 12, U. S. Code) each state may tax national banking associations in any one of four forms but the imposition of any one of such forms shall be in lieu of the others except that in the case of a tax upon net income, individuals may be taxed upon dividends from national banking associations if the law of the State provides for such a tax upon all business corporations and dividends therefrom.

"5. That the Philippine Islands imposes a tax upon net income and is therefore without power

to impose any capital deposit, or other tax of any kind upon such national banking association."

On June 7, 1932, the bank filed its suit to recover the said taxes and alleges substantially the same grounds as those set out in the protest when the payment was made. Upon the hearing of the cause it was established by the evidence that the National City Bank of New York, duly organized under the Act of Congress of June 3, 1864, is located at No. 55 Wall Street in the City of New York with a present capital of $110,000,000. On January 23, 1930, the Federal Reserve Board authorized said bank to establish branches in Manila and Cebu, Philippine Islands. These branches were in operation during the first half of the year 1931, the period covered by the taxes here in question.

On April 30, 1932, the plaintiff bank filed with the Bureau of Internal Revenue of the Philippine Islands a return of its net income from its branches in Manila and Cebu for the year 1931, a total of ₱518,871.61, upon which on June 3, 1932, it paid an income tax of ₱15,566.15 in accordance with the Internal Revenue laws of the Philippine Islands. This tax was paid without protest.

The trial court sustained the capital tax and ordered the deposit tax refunded to the plaintiff bank. Both parties have appealed to this court.

The Collector of Internal Revenue submits the following assignments of error:

"1. The trial court erred in holding that the branch of the National City Bank of New York in Manila, Philippine Islands, is an instrumentality of the United States Government.

"2. The trial court erred in holding that the branch of the National City Bank of New York in Manila, Philippine Islands, is only subject to the payment of taxes on its capital and not to the payment of taxes on its deposits also as provided for in section 1499 of Act No. 2711 (The Administrative Code), as amended.

"3. The trial court erred in ordering the defendant to return to the plaintiff the amount of P61,219.43, which represents the tax on its deposits for the first half of the year 1931, paid under protest by the said plaintiff to the defendant.

"4. The trial court erred in denying defendant's motion for a new trial."

At the outset it should be noted that the branches of the National City Bank of New York in Manila and Cebu are not separate legal entities. The Act of Congress of December 23, 1913 (U. S. C. Title 12, Sec. 601) provides in part:

"SEC. 601. *Authorization; conditions and regulations.*—Any national banking association possessing a capital and surplus of $1,000,000 or more may file application with the Federal Reserve Board for permission to exercise, upon such conditions and under such regulations as may be prescribed by the said board, either or both of the following powers:

"First. To establish branches in foreign countries or dependencies or insular possessions of the United States for the furtherance of the foreign commerce of the United States, and to act if required to do so as fiscal agents of the United States."

It is shown by the evidence in this case that the local branches of the National City Bank of New York have no separate corporate franchise, no separate capital stock, and are operated directly by the bank through officers and managers appointed and controlled by the National City Bank of New York. The Act of Congress, *supra*, authorizing the establishment of branches clearly does not contemplate separate legal entities for it makes no provision for their form of organization or the amount of capital to be invested therein, as is done with reference to investments by a national bank in other banks or corporations engaged in banking in a dependency or insular possession of the United States as set out in the second paragraph of U. S. C. Title 12, section 601, *supra*. In a word, a "branch" is simply an extension of the business of a national bank to foreign countries, dependencies or insular possessions of the United States. The branch of the National City Bank of New York in Manila is the National City Bank of New York doing business in Manila.

On March 19, 1930, this bank filed with the mercantile register of the Bureau of Commerce of the Philippine Islands copies of its articles of incorporation, its by-laws, the power of attorney granted to its local manager and the order of the Federal Reserve Board granting permission to the National City Bank of New York to establish branches in Manila and Cebu. The very taxes here in question are assessed by the Government of the Philippine Islands against the "National City Bank of New York" and the receipts therefor were issued to the "National City Bank of New York," and quite properly so, for the branch as such has neither assets nor liabilities. It is true that

the bank filed with the Collector of Internal Revenue a statement (Exhibit J) in which it undertook by an arbitrary calculation to furnish the Collector an estimated local capital of its Manila branch as a basis for the assessment of the capital tax. This was computed upon the following proportion: the capital, surplus and undivided profits of the bank ($224,554,298.54) is to its local capital as the total profits of the bank ($10,690,303.41) is to the profits of the Philippine branch ($151,851.11). This computation for the first half of the year 1931 resulted in a hypothetical local capital of ₱12,883,744.56. But this computation, submitted as it was under compulsion and solely for the purpose of estimating the tax which was paid under protest, does not in our judgment constitute any sort of an admission on the part of the bank, and cannot be invoked here to create a corporate entity which does not exist in fact.

In the light of the foregoing, the Collector's first assignment of error must be held to relate to the National City Bank of New York. That a national bank is an instrumentality of the government of the United States is a proposition supported both by actual facts and by so many decisions since the passage of the first national banking act, approved June 3, 1864, that it requires no citation of authorities and cannot be questioned now. It makes no difference in principle whether the bank functions as such instrumentality in its home office or in a branch office. The very act authorizing the establishment of branches provides that such branches may be established "for the furtherance of the foreign commerce of the United States and to act if required to do so as fiscal agents of the United States." Since the appeal in the present case was

lodged in this court, the branch in Manila of the National City Bank of New York has performed an important fiscal service to the United States Government as a depository of gold under the Gold Reserve Act of January 30, 1934. There is, therefore, no merit in the Collector's first assignment of error.

We shall consider together the Collector's second assignment of error which relates to the payment of the tax on deposits and the bank's assignment of error which relates to the capital tax.

Section 1499 of the Administrative Code provides:

> "*Tax on capital, deposits, and circulation of banks.*—Subject to the exemption herein made there shall be collected from banks the following taxes on capital, deposits, and circulation:
>
> "(*a*) Upon the capital employed by the bank, for each month, one twenty-fourth of one per centum.
>
> "(*b*) Upon the average amount of deposits of money, subject to payment by check or draft, or represented by certificates of deposits, or otherwise, whether payable on demand, or on some future day, for each month, one-eighteenth of one per centum.
>
> "(*c*) Upon the average amount of circulation issued by the bank, including as circulation all notes and other obligations calculated or intended to circulate or be used as money but not including such as may be retained in the vault of the bank or redeemed and on deposits for said bank, for each month, one-twelfth of one per centum.
>
> "(*d*) 'Bank' as herein used, includes every incorporated or other bank, and every person,

association, or company having a place of business where credits are opened by the deposit or collection of money or currency subject to be paid or remitted upon draft, check, or order, or where money is advanced or loaned on stocks, bonds, bullion, bills of exchange, or promissory notes are received for discount or for sale.

" 'Capital employed' does not include money borrowed or received from time to time in the usual course of business from any person not a partner of or interested in such bank; and no tax shall be imposed on the capital employed by any person whose sole business is lending money on real-estate security."

Many attempts have been made by the several states and territories of the United States to levy taxes in one form or another upon national banks without the consent of Congress but they have uniformly failed. Chief Justice White, in the case of Owensboro National Bank v. Owensboro, 173 U. S. 664, 667, 43 Law. Ed. 850, 852, which involved a franchise tax, stated the general principle thus:

"Early in the history of this government, in cases affecting the Bank of the United States, it was held that an agency, such as that bank was adjudged to be, created for carrying into effect national powers granted by the Constitution, was not in its capital, franchises, and operations subject to the taxing powers of a state. M'Culloch v. Maryland, 4 Wheat. 316 (4:579); Osborn v. Bank of the United States, 9 Wheat. 738 (6:204).

"The principles settled by the cases just referred to and subsequent decisions were thus

stated by this court in Davis v. Elmira Savings Bank, 161 U. S. 283 (40:701):

" 'National banks are instrumentalities of the Federal Government, created for a public purpose, and as such necessarily subject to the paramount authority of the United States. It follows that an attempt, by a state, to define their duties or control the conduct of their affairs is absolutely void, wherever such attempted exercise of authority expressly conflicts with the laws of the United States, and either frustrates the purpose of the national legislation or impairs the efficiency of these agencies of the Federal Government to discharge the duties for the performance of which they were created. These principles are axiomatic, and are sanctioned by the repeated adjudications of this court.'

"It follows then necessarily from these conclusions that the respective states would be wholly without power to levy any tax, either direct or indirect, upon the national banks, their property, assets, or franchises, were it not for the permissive legislation of Congress.

"The first act providing for the organization of national banks, passed February 25, 1863, chap. 58 (12 Stat. at L. 665), contained no grant of power to the states to tax national banks in any form whatever. Doubtless the far-reaching consequence to arise from depriving the states of the source of revenue which would spring from the taxation of such banks, and the error of not conferring the power to tax, early impressed itself upon Congress; for the following year (13

> Stat. at L. 99, chap. 106) power was granted to the states, not to tax the banks, their franchises or property, but to tax the shares of stock in the names of the shareholders. This provision subsequently was amended and supplemented in various particulars (15 Stat. at L. 34, chap. 7), and the result of this legislation is embodied in section 5219 of the Revised Statutes."

In the case of the First National Bank v. City of Hartford, 273 U. S. 548, 71 L. Ed. 767, the court held void a discriminatory tax on shares of the capital of the bank on the ground that any attempt to discriminate against the capital invested in national bank shares is intended to be forbidden by R. S. 5219, and the court again called attention to the principle involved:

> "National banks are not merely private moneyed institutions, but agencies of the United States created under its laws to promote its fiscal policies; and hence the banks, their property and their shares cannot be taxed under state authority except as Congress consents and then only in conformity with the restrictions attached to its consent. First Nat. Bank v. Anderson, supra, 347 (70 L. Ed. 302, 46 Sup. Ct. Rep. 135); Des Moines Nat. Bank v. Fairweather, 263 U. S. 103, 106, 88 L. Ed. 191, 195, 44 Supt. Ct. Rep. 23."

See also First National Bank of Guthrie Center (Iowa) v. Anderson, Auditor, 269 U. S. 341, 70 L. Ed. 295.

However, it is contended by the Solicitor-General on behalf of the Collector that the principle of exemption from taxation of the instrumentalities of the Federal

Government applies only to the States of the American Union and arises from the peculiar relation between the Federal Government and the State government, each being sovereign within its respective sphere. If a State government should have the power to tax national banks without the consent of Congress, it would be possessed of the power to cripple these national instrumentalities, if not entirely to destroy them. But it is argued that no such relation exists between the Federal Government and a dependency like the Philippine Islands, which is under the direct and plenary control of Congress. Attention is called to section 19 of the Act of Congress of August 29, 1916, 39 Stat. 551, which provides that "all laws enacted by the Philippine Legislature shall be reported to the Congress of the United States which reserves the power and authority to annul the same."

Whatever may be said, *ex hypothesi*, in support of the proposition that no such necessity for exemption from taxation of the Federal instrumentalities exists in the Philippines as in the several States, the contrary is definitely settled by the decisions of this court. We said in the case of the Standard Oil Company of New York *vs.* Juan Posadas, Jr., 55 Phil., 715, 717–718:

> "It would further appear perfectly clear that the principle which prohibits a State from taxing the instrumentalities of the Federal Government applies with equal force to the Philippine Islands. At least, that was our holding in the Post Exchange case. Nevertheless the Attorney-General persists in assuming a difference in tax powers between the relations of the Philippine Government to the National Government and of a State government to the National Gov-

ernment. We are frank to say that we are unable to see eye to eye with the Attorney-General. It would be absurd to think that a derivative sovereignty like the Government of the Philippine Islands, could tax the instrumentalities of the very government which brought it into existence. If a sovereign State of the American Union cannot abridge or restrict the activities of the United States Government, much less can a creature of that Government, as the Philippine Government is, do so."

In the recent case of Genato Commercial Corporation v. Insular Collector of Customs, promulgated March 13, 1934, Vol. XXXII Off. Gaz. No. 69, page 1327, this Court said:

"Without Congressional consent, no Federal agency or instrumentality can be taxed by the Government of the Philippine Islands."

See also National City Bank of New York vs. Domenech, Treasurer of Porto Rico, 71 Fed. (2nd.) 13.

This brings us to the question whether or not the Congress of the United States has given its consent that the National City Bank of New York should be subjected to the capital tax and the deposit tax here involved. The only statute in which Congress has consented that national banks may be subjected to local taxation is R. S. 5219 as amended by the Acts of March 4, 1923, 42 Stat. 1499 (U. S. C. Title 12, section 548), and the Act of March 25, 1926, 44 Stat. Chap. 88, 223. This is in part as follows:

"SEC. 5219. The legislature of each State may determine and direct, subject to the provisions of this section, the manner and place of taxing

all the shares of national banking associations located within its limits. The several States may (1) tax said share, or (2) include dividends derived therefrom in the taxable income of an owner or holder thereof, or (3) tax such associations on their net income, or (4) according to or measured by their net income, provided the following conditions are complied with:

"1. (*a*) the imposition by any State of any of the above four forms of taxation shall be in lieu of the others, except as hereinafter provided in subdivision (*c*) of this clause."

The Solicitor-General on behalf of the Collector contends that R. S. 5219 has never been extended to the Philippine Islands and is limited in its application to States of the American Union. The logical conclusion of his argument is that there are no express limitations or restrictions whatever upon the Government of the Philippine Islands as regards the kind or amount of taxes it may levy upon national banks. It is not so stated but we assume the Solicitor-General would admit the implied limitation that no tax would be valid which would impair the usefulness of such banks as instrumentalities of the Federal Government.

The National City Bank of New York, as appellant, contends that R. S. 5219 was in force in the Philippine Islands before the enactment of the Act of August 29, 1916 (the Jones Law), 39 Stat. 547, and that it was continued in force under Section 6 of said Act which provides:

"SEC. 6. That the laws now in force in the Philippines shall continue in force and effect,

except as altered, amended, or modified herein, until altered, amended, or repealed by the legislative authority herein provided or by Act of Congress of the United States."

It is further intimated that the very Act of Congress authorizing the establishment of branches of national banking associations in the dependencies or insular possessions of the United States makes R. S. 5219 applicable to the Philippine Islands.

It is enough to say that except as provided in R. S. 5219, *supra*, Congress has not given its consent to the taxation of national banking associations as such. The language of that statute, as amended by the Act of March 25, 1926, is plain as to the four forms of taxation authorized. The omission of any reference to capital and deposit taxes in R. S. 5219 means simply that Congress has withheld its consent to these forms of taxation of national banks.

In the recent case of National City Bank of New York vs. Domenech, Treasurer of Puerto Rico, 71 Fed. (2nd.) 13, decided on May 18, 1934, the Circuit Court of Appeals of the First Circuit held avoid a capital tax similar to the one here in question levied by the government of Puerto Rico.

Insofar as the judgment of the court below orders the refund of the deposit taxes paid under protest by the National City Bank of New York for the first six months of the year 1931, the same is affirmed; and insofar as it sustains the capital tax levied for the same period as aforesaid, it is reversed and the defendant Collector of Internal Revenue is ordered to refund to the said bank the entire amount of ₱77,324.11 paid

under protest as capital and deposit taxes, without interest (section 1579, Administrative Code) or costs.

(Sgd.) GEORGE BUTTE

We concur:

(Sgd.) THOS. A. STREET
(Sgd.) GEO. A. MALCOLM
(Sgd.) ANTONIO VILLA-REAL
(Sgd.) J. A. HULL
(Sgd.) J. C. VICKERS
(Sgd.) C. A. IMPERIAL
(Sgd.) LEONARD S. GODDARD
(Sgd.) ANACLETO DIAZ

The Chief Justice took no part.

Justice Santos dissents in separate opinion.

[CAPTION OMITTED]

ABAD SANTOS, *J.* dissenting:

Upon the authority of adjudicated cases, it must be regarded as settled that national banks are agencies of the United States and, as such, are subject to state taxation only as Congress expressly permits. The exemption of federal agencies from state taxation is grounded upon the most fundamental principles which lie at the basis of the dual system of government established in the United States. As stated by the Supreme Court of the United States in South Carolina v. United States, 199 U. S. 437, 448, 50 L. ed. 261: "We have in this republic a dual system of government, national and state, each operating within the same territory and upon the same persons; and yet working without collision, because their functions are different." Again: "The general government and the states, although both exist within the same territorial limits, are separate and distinct sovereignties, acting sep-

arately and independently of each other, within their respective spheres." United States v. Railroad Co., 17 Wall. 322, 21 L. ed. 597. Furthermore: "Within the limits of the powers granted to the federal government, it is supreme. Within the sphere allotted to them the coördinate branches of the general government revolve, unobstructed by any legitimate exercise of powers by the state government. The powers expressly given to the federal government are limitations upon the state authority. But with the exception of these limitations the states are supreme; and their sovereignty can be no more invaded by the action of the general government, than the action of the state governments can arrest or obstruct the course of the national power." Worchester v. Georgia, 6 Pet. 515, 570, 8 L. ed. 483.

In South Carolina v. United States, supra, it was also said: "The two governments, national and state, are each to exercise their powers so as not tc interfere with the free and full exercise by the other of its powers. This proposition, so far as the nation is concerned, was affirmed at an early day in the great case of M'Culloch v. Maryland, 4 Wheat. 316, 4 L. Ed. 579, in which it was held that the state had no power to pass a law imposing a tax upon the operations of a national bank. The case is familiar and needs not to be quoted from. No answer has ever been made to the argument of Mr. Chief Justice Marshall, and the propositions there laid down have become fundamental in our constitutional jurisprudence. Osborn v. United States Bank, 9 Wheat. 738, 6 L. Ed. 204; Weston v. Charleston, 2 Pet. 449, 7 L. Ed. 481; New York v. Commissioners of Taxes, 2 Black 620, 17 L. Ed. 451; Bank Tax Case, 2 Wall. 200, 17 L. Ed. 793; The Banks v. The Mayor, 7 Wall. 16, 19 L. Ed. 57."

In their relation to the national or federal government, the Philippine Islands stand in a very different position from that held by one of the States of the Union. Their constitutional states is similar to that of a Territory, and the reason for the doctrines of exemption of federal agencies from state taxation, does not exist in the case of the Philippine Islands. Hence the doctrine should not apply here. This view finds support in the opinion of the Supreme Court of the United States in Talbot v. Silver Bow County Commissioners, 139 U. S. 438, 35 L. ed. 210. Speaking for the court in that case, Mr. Justice Brewer said: "Upon what principle is the power of a state to tax a national bank, without the consent of Congress, denied? The answer to this question was fully given by Chief Justice Marshall in the cases of M'Culloch v. Maryland and Weston v. Charleston, *supra*. Briefly stated, the argument was this: Two distinct sovereignties, the States and the United States, exercise jurisdiction within the same territorial limits. Each has the power of taxation. This power is in its nature absolute and unlimited. Power to tax is power to destroy. Given to the State the power to tax any of the instrumentalities which the United States creates for the exercise of its jurisdiction, and the former may impede, if not wholly stop, the latter in the discharge of its duties as sovereign. Hence, by necessary implication, the absolute exemption from state taxation of any of the instrumentalities—and among them are national banks—which the United States creates for the exercise of its powers and the discharge of its duties. But the whole argument fails when applied to a Territory. It is not a distinct sovereignty. It has no independent powers. It is a political community organized by

Congress, all whose powers are created by Congress, and all whose acts are subject to congressional supervision. Its attitude to the general government is no more independent than that of a city to the State in which it is situated, and which has given to it its municipal organization. Who would contend, in the absence of express legislative provision therefor, that a bank created by or under the laws of a State, and located and doing business in a city of that State, could claim exemption from municipal taxation upon its property? A bank is an institution organized for private business, and with a view to individual profit, although it may serve a public purpose and such public purpose justify its creation; and no such private corporation has any implied exemption from local taxation by a municipal or political organization in which it is situated. The only ground on which exemption from such taxation can be based, in the absence of express legislative provision, is that the tax proceeds from a distinct and independent sovereignty. As the reason for the rule of exemption of a national bank from state taxation fails in respect to a bank located in a Territory, the rule also fails."

It is well settled that, unless restricted by the territorial act, the powers of a territorial legislature extend to all rightful subjects of legislation not inconsistent with the constitution and laws of the United States. American Insurance Co. v. Canter, 1 Pet. 511, 7 L. ed. 243. Walker v. New Mexico, etc., R. Co., 165 U. S. 593, 41 L. ed. 837. In Severino v. Governor-General, 16 Phil., 366, 383, this court has declared that "the legislative power which was delegated by the President to the Philippine Commission and which was later ratified by the Congress of the United States, was

more comprehensive than the legislative powers now possessed by State government." And in U. S. v. Bull, 15 Phil., 7, 29, this court said: "The legislative power of the Government of the Philippine Islands is granted in general terms subject to specific limitations. The general grant is not alone of power to legislate on certain subjects, but to exercise the legislative power subject to the restrictions stated. It is true that specific authority is conferred upon the Philippine Government relative to certain subjects of legislation, and that Congress has itself legislated upon certain other subjects. These, however, should be viewed simply as enactments on matters wherein Congress was fully informed and ready to act, and not as implying any restriction upon the local legislative authority in other matters. (See Opinion of Atty.-Gen. of U. S., April 16, 1908.)"

In the light of the foregoing authorities, it is, I think, reasonable to conclude that national banks are exempt from local taxation only as Congress so provides either expressly or by necessary implication.

The Philippine Autonomy Act, otherwise known as the Jones Law, vests in the Philippine Legislature general legislative power, except as otherwise therein provided. (Sec. 8.) It also contains a specific grant of power to impose taxes and assessments on property, and license fees for franchises and privileges, and internal taxes, direct or indirect, for the purposes of the Philippine Government and the provincial and municipal governments thereof. (Sec. 11.) There is no express provision either in the Philippine Autonomy Act or in any other Act of Congress which exempts national banks from taxation by the Philippine Government. Is there any such provision from which such

exemption is necessarily implied? I believe the answer must be in the negative. The whole course of congressional legislation with respect to the Philippine Islands, has been characterized by a desire not to deprive the Philippine Government of any revenues to which it is entitled upon moral and equitable consideration. Congress has even provided for the payment to the Philippine Government of taxes collected in the United States on articles coming from the Philippines. In view of this liberal attitude of Congress, I can not persuade myself that it could have intended to exempt the plaintiff-appellant herein from the payment of taxes which are imposed on all banking institutions doing business in the Philippine Islands.

I am, therefore, of the opinion that, in so far as the judgment of the court below sustains the collection of the capital taxes here involved, it should be affirmed; and in so far as it orders the refund of the deposit taxes paid under protest by the appellant, the same should be reversed.

(Sgd.) JOSE ABAD SANTOS

On October 4, 1934, the defendant-appellant filed with the Supreme Court of the Philippine Islands a motion for reconsideration of the foregoing decision, which reads as follows:

[CAPTION OMITTED]

MOTION FOR RECONSIDERATION

Comes now the defendant-appellant, by the undersigned Solicitor-General, and respectfully moves this Honorable Court to reconsider the decision it has rendered in the present case, on the ground that said decision is contrary to the evidence and the law.

## I

*The decision in the present case is contrary to the evidence of record.*

In its decision this Court said: "At the outset it should be noted that the branches of the National City Bank of New York in Manila and Cebu are not separate legal entities. * * * The branch of the National City Bank of New York in Manila is the National City Bank of New York doing business in Manila. * * * The very taxes here in question are assessed by the Government of the Philippine Islands against the National City Bank of New York." (Pp. 3, 4, 5, decision.)

We submit that this finding does not find support in the evidence of record. The branches of the National City Bank of New York in Manila and Cebu have been established under a permit issued by the Federal Reserve Board on January 23, 1930, which authorizes the National City Bank of New York to establish branches in Manila and Cebu, Philippine Islands (Exhibit B). The record shows that the National City Bank of New York, instead of opening a new branch in the City of Manila, bought the assets and pending business of the International Banking Corporation, a banking institution which for a number of years had been operating in these Islands, and continued the operation of the said bank (pp. 123, 124, record; pp. 20, 21, t. s. n.). The branch in the City of Manila of the National City Bank of New York is engaged in all kinds of banking activities (p. 112, record; p. 9, t. s. n.), and is run by a manager who has full power to manage, transact and conduct general banking business in said branch (Exhibit E). Said branch of the National City Bank of New York in Ma-

nila, therefore, transacts and concludes banking business and operates in this jurisdiction in the same manner as any other branch of a foreign bank in these Islands.

In the case of Pan-American Bank and Trust Co. v. National City Bank of New York, 6 Fed. (2.s.), 762, it has been held:

> "A national bank and its foreign branch, organized under Act Dec. 23, 1913, par. 25 (Comp. St., par. 9745), are separate entities as relates to business transactions between them, and a branch bank, which negotiates a draft drawn against a letter of credit issued by the parent bank becomes the legal holder thereof, and their respective rights in relation thereto are governed by the same rules as between unrelated banks."

In the light of the above ruling, it may be concluded that the National City Bank of New York and its branches in Manila and Cebu are separate legal entities, the internal arrangements between said branches and the head-office with respect to the management and operation of the former notwithstanding. While the Philippine Islands is not, in the strict sense of the word, a foreign country to the United States, it is nevertheless not an integral part of the United States, and its financial system is entirely independent from that of the United States.

The taxes on the capital and deposits involved in this case are assessed on the capital and deposits of the branch of the National City Bank of New York in Manila for the first half of the year 1931, as computed by the manager of said branch (Exhibit F). The amounts of said capital and deposits cannot be

hypothetical nor arbitrary. It is admitted that the branch of the National City Bank of New York in Manila is run with funds borrowed from the head-office (pp. 113–114, rec.; pp. 10, 11, t. s. n.). The aggregate, therefore, of the different sums of money borrowed from the head-office of the National City Bank of New York by the said branch constitutes its capital, and such aggregate sum can never be arbitrary nor hypothetical.

We, therefore, submit that the finding in the decision herein to the effect that the branch of the National City Bank of New York in Manila is the National City Bank of New York, New York, doing business in Manila, and that the taxes in question are assessed by the Philippine Government against the National City Bank of New York in New York, finds no support in the evidence of record.

II

*The decision entered in this case is contrary to law.*

The decision holds that the taxes on capital and deposits in question, assessed and collected under the provisions of section 1499 of the Administrative Code, as amended, is illegal, because a national bank, as an instrumentality of the Federal Government, cannot be taxed by the Philippine Government without the consent of Congress, and the taxes in question are not provided for in R. S. 5219 (sec. 548, Title 12, U. S. C. A.).

We submit that this finding is erroneous. As stated above, the taxes in question are not assessed against the National City Bank of New York in New York, but against its branch in the City of Manila which is a separate entity. While national banks as instrumentalities of the Federal Government may not be taxed by

States government without the consent of Congress, the privilege has not been extended to branches of national banks in dependencies and insular possessions of the United States. Section 6016 of the Act of Congress of December 23, 1913 (U. S. C. A., Title 12, section 601), only authorizes national banking associations to establish branches in foreign countries or dependencies or insular possessions of the United States. The law does not provide that such branches in foreign countries or dependencies or insular possessions of the United States shall enjoy the privilege of immunity from taxation. And it cannot have been intended by Congress that they should, for, if the branch is in a foreign country, how can it claim exemption from taxation by a foreign government?

But even granting, for the sake of argument, that the branch of the National City Bank of New York in Manila is an instrumentality of the Federal Government, nevertheless it should not enjoy the privilege of exemption from local taxes which are not arbitrary and which do not affect their efficiency as such. The principle that States government cannot tax national banks without the consent of Congress has no application to the present case and in this jurisdiction. Aside from the forceful reasoning found in the herein dissenting opinion of Mr. Justice Santos, which is supported by well-established precedents, it may be stated that the application of the principle in this jurisdiction is contrary to the trend of Congressional legislations and court decisions concerning the Philippine Islands.

By section 1 of the Act of Congress of July 1, 1902 (the Philippine Bill), Congress has willed that the Constitution of the United States and all laws of the United States which are not locally inapplicable shall

not apply to the Philippine Isands. Many years ago, this Court has held that "neither English nor American common law is in force in these Islands, nor are the doctrines derived therefrom binding upon our courts." (U. S. v. Cuna, 12 Phil., 241.) In the case of United States vs. Bull (15 Phil., 7), this Court said:

> "The Government of the Philippine Islands is not that of a State or a Territory, although its form and organization somewhat resembles that of both. It stands outside of the constitutional relation which unites the States and Territories into the Union. The authority for its creation and maintenance is derived from the Constitution of the United States, which, however, operates on the President and Congress, and not on the inhabitants of the Philippines and the Philippine Government.
>
> "The legislative power delegated to the Government of the Philippines is granted in general terms, subject to specific limitations. The grant is not alone of power to legislate on certain subjects, but to exercise the legislative power subject to the restrictions stated."

The Act of Congress of August 29, 1916 (the Jones Law) vests in the Philippine Legislature "general legislative power, except as otherwise provided" therein (sec. 8), and provides that "taxes and assessments on property and license fees for franchises, and privileges, and internal taxes, direct or indirect, may be imposed for the purpose of the Philippine Government." (Section 11.)

If the Constitution of the United States and the statutory laws of Congress not locally inapplicable are by will of Congress not extended to the Philippine

Islands; if neither English nor American common law and the doctrines derived therefrom are not in force in this jurisdiction; if the Government of the Philippine Islands is not that of a state or territory, and its legislative powers are granted in general terms, subject to specific limitations; if the Philippine Autonomy Act vests in the Philippine Government general power to legislate and impose taxes for its purpose, there is every reason to hold that the legal principle that a State government cannot tax a national bank without the consent of Congress, which is derived from the Constitution of the United States and is intended to preserve harmony between the Federal Government and the States and territories of the American Union in which the Constitution of the United States is in force, is not applicable to the Philippine Islands.

The decision further states, "It is enough to say that except as provided in R. S. 5219, *supra*, Congress has not given its consent to the taxation of national banking associations as such. The language of that statute, as amended by the Act of March 25, 1926, is plain as to the four forms of taxation authorized. The omission of any reference to capital and deposit taxes in R. S. 5219 means simply that Congress has withheld its consent to these forms of taxation of national banks." (Page 12, decision.)

While we admit that the limitation imposed in R. S. 5219 applies to States and territories where the Constitution of the United States and its statutory laws not locally inapplicable are in force, we nevertheless submit that it is not applicable to the Philippine Islands. Section 5219 of the Revised Statutes, as amended (sec. 548, Title 12, U. S. C. A.), is not and has never been in force in the Philippine Islands.

Under article 1 of the Act of Congress of July 1, 1902, the Philippine Bill, it is provided that "the provisions of section 1891 of the Revised Statutes of 1878 shall not apply to the Philippine Islands." Section 1191 of the Revised Statutes of 1878 provides that "the Constitution and all laws of the United States which are not locally inapplicable shall have the same force and effect within all the organized territories, and in every territory hereafter organized, as elsewhere within the United States." As R. S. 5219 is a law in existence prior to the Act of Congress of July 1, 1902, by virtue of section 1 of the Act of Congress of July 1, 1902, it is not in force in the Philippine Islands. The limitations, therefore, upon the power of the Philippine Government to tax national banking associations are not found in R. S. 5219, but in the universal principle that no tax would be valid which would discriminate against or impair the efficiency of such associations as instrumentalities of the Federal Government.

Do the taxes on capital and deposits imposed by section 1499 of the Administrative Code, as amended, discriminate against national banks? Are said taxes arbitrary? Do they impair the efficiency of national banks as instrumentalities of the Federal Government?

The taxes imposed in section 1499 of the Administrative Code, as amended, applies to all banking institutions, without distinction, doing business in the Philippine Islands. They consist of one twenty-fourth of one per centum upon the capital employed for each month, and one-eighteenth of one per centum upon the average amount of deposits of money for each month. No claim, therefore, that it is discriminatory, nor that it will impair the efficiency of the plaintiff as a Federal agency, can be successfully urged.

Representing, as they do, only a very insignificant percentage of the capital and deposits, said taxes certainly would not affect the financial condition of so big and powerful an institution as the plaintiff to the extent of impairing its efficiency as a Federal agency.

Furthermore, it is a well-settled rule that not all state laws taxing national banks are invalid. In the case of First National Bank v. Missouri (263 U. S., 640), it has been held:

> "National banks are subject to state laws that do not interfere with the purpose of their creation, tend to destroy or impair their efficiency as Federal agencies, or conflict with the laws of the United States."

As section 1499 of the Administrative Code is not in conflict with any Congressional legislation, and as the taxes therein imposed do not interfere with the purpose for which the National City Bank of New York was created, nor tend to impair or destroy its efficiency as a Federal agency, the said section is valid and the taxes assessed thereunder against the branches of the plaintiff, the National City Bank of New York, in the Philippine Islands are perfectly legal.

Moreover, Congress has by necessary implication consented that the Philippine Government tax national associations in these Islands. Under section 19 of the Act of Congress of August 29, 1916, Congress has reserved to itself the power to annul any law enacted by the Philippine Legislature. Section 1499 of the Administrative Code, which imposes capital and deposit taxes on all banking institutions doing business in the Philippine Islands, without distinction, has been reported to Congress, and this body has not annulled the same. Congress, therefore, has impliedly consented

that all banks in the Islands, including branches of national banks, should pay the taxes imposed in said section of the Administrative Code.

The decision cites the case of Standard Oil Company of New York vs. Juan Posadas, Jr. (55 Phil., 715). With due deference to this Court, we submit that the ruling in said case should not be applied to this case in all its force. The entities concerned in that case are the Army and Navy of the United States, which are instrumentalities of the Federal Government essential to its existence. In that case, therefore, there are powerful reasons to hold that the Philippine Government cannot tax them without the consent of Congress. In the present case, on the other hand, the entity concerned is a bank, primarily organized for profit and engaged in private banking business, although incidentally and occasionally used to perform for the Federal Government fiscal services. The conditions that obtain in the Standard Oil case are, therefore, absent in the present case. It is submitted that in the application of the rule, the character of the instrumentality concerned should be considered. The rule should not be applied when its application will enrich a private institution and work injustice to other institutions engaged in the same business, which are entitled to the same degree of protection from the Government.

The decision also cites the case of the National City Bank of New York v. Domenech, Treasurer of Porto Rico [71 Fed. (2. s.), 13]. This decision has no application to the present case. The territory of Porto Rico does not occupy the same position with regard to the United States as the Philippine Islands. Under the Organic Act of Porto Rico, the statutory laws of

the United States, not locally inapplicable, have the same force and effect in Porto Rico as in the United States (sec. 14, Act of Congress of April 12, 1900). The same relations, therefore, that exist between the Federal Government and the States and territorial governments obtain in Porto Rico, a situation which does not obtain in the Philippine Islands.

CONCLUSION

In view of the foregoing, we respectfully move this Honorable Court to reconsider its decision entered in this case, and to enter therein another affirming the judgment of the lower court in so far as it sustains the collection of the capital taxes herein involved, and reversing the same in so far as it orders the defendant to refund to the plaintiff the deposit taxes paid under protest by said plaintiff. It should be remembered that the branches of the National City Bank of New York in Manila and Cebu are engaged in general banking business in this jurisdiction. To exempt them, therefore, from the taxation in question will give them an undue advantage over other banks doing business in this jurisdiction, including the Philippine National Bank which is largely capitalized by the Philippine Government. We plead for a ruling that will discriminate against none and do justice to all, and that will restore to the Philippine Government the right to tax banking associations doing business in this jurisdiction and make them bear their just share of the burdens of that government whose protection they so constantly and persistently invoke.

Respectfully submitted.

(Sgd.) SERAFIN P. HILADO
*Solicitor-General*

MANILA, *October 3, 1934.*

Copy served on Messrs. Ross, Lawrence & Selph, Attorneys for the Plaintiff-Appellee, National City Bank Building, Manila.

The above petition for reconsideration was denied by the Supreme Court in a resolution dated October 6, 1934, which read as follows:

In case G. R. No. 41032, The National City Bank of New York vs. Juan Posadas, Jr., etc., the court *in banc* having under consideration the motion of the Solicitor-General in behalf of the defendant and appellant praying that the decision of this court of September 21, 1934, be reconsidered, DENIED the motion. Justice Santos voted to grant the motion.

On October 9, 1934, the defendant-appellant, by its counsel, filed with the Supreme Court the following exception, notice of intention to petition the Supreme Court of the United States for a writ of certiorari, and motion for a stay of execution:

[CAPTION OMITTED]

EXCEPTION, NOTICE OF INTENTION TO PETITION THE SUPREME COURT OF THE UNITED STATES FOR A WRIT OF CERTIORARI, AND MOTION FOR A STAY OF EXECUTION.

Comes now the undersigned Solicitor-General, in behalf of the defendant-appellant in the above-entitled action, and respectfully excepts to the resolution of this Honorable Court denying his motion for a reconsideration of the decision entered in said action, notice

of which was received on October 9, 1934, and to the final judgment entered therein.

Notice is hereby given that the defendant-appellant intends to petition the Supreme Court of the United States for a writ of certiorari for the review of the decision and judgment entered by this Honorable Court in the above-entitled action.

The grounds, *inter alia*, upon which the defendant-appellant intends to petition the Supreme Court of the United States for a writ of certiorari for the review of the decision and judgment of this Honorable Court hereinabove referred to are:

1. That the decision and judgment entered in this action by this Honorable Court are contrary to law.

2. That in this action several statutes of the United States, to wit: R. S. 5219, as amended (sec. 548, Title 12, U. S. C.), the Act of Congress of December 23, 1913 (sec. 601, Title 12, U. S. C.), and sections 8 and 11 of the Act of Congress of August 29, 1916 (the Jones Law), are involved.

3. That the value in controversy in this action (P77,324.11) exceeds twenty-five thousand dollars ($25,000).

The defendant also respectfully prays for a stay of execution of the judgment entered in the present action during the pendency of the application for the writ of certiorari and of the proceedings to be had in the Supreme Court of the United States.

On October 10, 1934, the Supreme Court of the Philippine Islands adopted the following resolution:

Upon consideration of the motion of the Solicitor-General filed in case G. R. No. 41032, The National

City Bank of New York vs. Juan Posadas, Jr., etc., excepting to the order of this court denying his motion for reconsideration of the decision entered therein, as well as to the final judgment to be entered, giving notice of his intention to petition the Supreme Court of the United States for a writ of certiorari for the review of said decision and judgment, and praying for a stay of execution of the judgment during the pendency of the application for the writ of certiorari and of the proceedings to be had in the Supreme Court of the United States, IT IS ORDERED that the exception be noted and the prayer for stay of execution be GRANTED.

On October 10, 1934, the Supreme Court of the Philippine Islands entered in the case a final judgment, which reads as follows:

[CAPTION OMITTED]

JUDGMENT

[File No. 41032]

OCTOBER 10, 1934

The Court having regularly acquired jurisdiction for the trial of the above-entitled cause submitted by both parties for decision, after consideration thereof by the Court upon the record, its decision and order for judgment having been filed on the 21st day of September, A.D. nineteen hundred and thirty-four;

By virtue thereof it is hereby adjudged and decreed that the judgment of the Court of First Instance of Manila, dated the 16th day of October, nineteen hundred and thirty-three, and from which the above-entitled appeal was taken, be, and the same is hereby,

affirmed insofar as the court below orders the refund of the deposit taxes paid under protest by the National City Bank of New York for the first six months of the year 1931; and insofar as it sustains the capital tax levied for the same period as aforesaid, it is reversed and the defendant Collector of Internal Revenue is ordered to refund to the said bank the entire amount of P77,324.11 paid under protest as capital and deposit taxes, without interest (section 1579, Administrative Code) or costs.

It is further ordered that * * * recover from * * * the sum of P * * * as costs.

V. ALBERT
*Clerk of the Supreme Court of the Philippine Islands.*

Certified correct:
(Sgd.) V. ALBERT
*Clerk, Supreme Court*

THE UNITED STATES OF AMERICA
PHILIPPINE ISLANDS
SUPREME COURT OF THE PHILIPPINE ISLANDS

I, Vicente Albert, Clerk of the Supreme Court of the Philippine Islands, do hereby certify that the foregoing ..... printed pages contain a true and correct transcript of the record of the case, entitled "The National City Bank of New York, plaintiff-appellant, *versus* Juan Posadas, Jr., Collector of Internal Revenue of the Philippine Islands, defendant-appellant," bearing No. 41032 of the General Register of the Supreme Court.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Supreme Court of the Philippine Islands this ..... day of ....., A. D., 1934.

VICENTE ALBERT
*Clerk of the Supreme Court*
*of the Philippine Islands.*

[fol. 177] [Stamp:] Office of the Clerk, Supreme Court U. S. Received April 3, 1935.

SUPREME COURT OF THE UNITED STATES
October Term, 1934

No. —

JUAN POSADAS, JR., Collector of Internal Revenue of the Philippine Islands, Petitioner,

vs.

NATIONAL CITY BANK OF NEW YORK

ORDER EXTENDING TIME WITHIN WHICH TO APPLY FOR WRIT OF CERTIORARI

On consideration of the motion of counsel for petitioner in the above-entitled cause, and good cause therefor having been shown,

It is ordered that the time within which petition for writ of certiorari may be filed herein be, and the same is hereby, extended for a period of sixty days from April 10, 1935.

Geo. Sutherland, Associate Justice of the Supreme Court of the United States.

Dated this 3rd day of April, 1935.

Endorsed: Supreme Court of the United States, October Term, 193—. Term No. ——. Juan Posadas, Jr., Collector, vs. National City Bank of New York. Order extending time within which to apply for writ of certiorari. Filed Apr. 3, 1935.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 14, 1935

The petition herein for a writ of certiorari to the Supreme Court of the Philippine Islands is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

FILE COPY

Office Supreme Court, U. S.
FILED
JUN 8 19
CHARLES ELMORE CROPLEY
CLERK

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1935

## No. 114

JUAN POSADAS, JR., Collector of Internal Revenue of the Philippine Islands, *Petitioner,*

vs.

THE NATIONAL CITY BANK OF NEW YORK.

## PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS AND SUPPORTING BRIEF

WILLIAM CATTRON RIGBY,
*Attorney for Petitioner.*

SERAFIN P. HILADO,
*Solicitor-General of the Philippine Islands,*
*Of Counsel.*

Rufus H. Darby Printing Co., Inc., Washington, D. C.

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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1935

## No. 114

JUAN POSADAS, JR., Collector of Internal Revenue of the Philippine Islands, *Petitioner,*

vs.

THE NATIONAL CITY BANK OF NEW YORK.

**PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS**

*To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:*

Petitioner, Juan Posadas, Jr., Collector of Internal Revenue of the Philippine Islands, prays a writ of certiorari to review the final judgment of the Supreme Court of the Philippine Islands, October 10, 1934 (R. 174-175), which, by a divided court, affirmed in part and in part reversed the judgment of the Court of First Instance of Manila of October 16, 1933. The case involves the power of the Philippine Government to tax the Philippine branches of the National City Bank of New York. The bank sued the Collector for a refund of ₱77,324.11 paid under protest, partly taxes on its capital employed in the Islands ("capital

taxes"), and partly taxes on its deposits in the Islands ("deposits taxes"). The Court of First Instance held the deposits taxes invalid and directed their refund, but sustained the capital taxes (R. 136-137). The Philippine Supreme Court,—the CHIEF JUSTICE taking no part, and JUSTICE SANTOS dissenting,—held both classes of taxes invalid as beyond the power of the insular government (R. 142-156; 156-161).

By order of MR. JUSTICE SUTHERLAND the time within which to apply for a writ of certiorari in this case was extended for sixty days to June 9, 1935 (R. 177).

## QUESTION PRESENTED

The single question is whether the Philippine Government may tax the Philippine branches of a national banking association ("national bank") of the United States.

This divides itself into two: (a) Does the tax section of the National Bank Act[1] extend to the Philippines? And (b) if not, then is there any implied prohibition against the insular government taxing the Philippine branches of a national bank?[2]

---

[1] Section 41 of the National Bank Act of June 3, 1864, c. 106, 13 Stat. 99, 112, as reenacted in Section 5219 of the Revised Statutes, as amended by the Act of March 25, 1926, c. 88, 44 Stat. 223; 12 U. S. Code, Supp., 548.

[2] The question here presented differs sharply from that in *Manuel V. Domenech, Treasurer of Puerto Rico,* v. *National City Bank of New York,* No. 386 at the October Term, 1934, of this court, decided February 4, 1935, 294 U. S. 199, in that the statutory laws of the United States not locally inapplicable are expressly extended to Puerto Rico by the Organic Act of Congress for that Island, Act of March 2, 1917, c. 145, Sec. 9, 39 Stat. 951, 954 (48 U. S. Code, 734); whereas, directly to the contrary, the Organic Act for the Philippine Islands provides:

> "That the statutory laws of the United States hereafter enacted *shall not apply* to the Philippine Islands,

## STATUTES

FEDERAL:

(1) The former Organic Act for the Philippine Islands, the "Foraker Act" (superseded by the "Jones Law" of August 29, 1916, the present Organic Act) provided in the last sentence of its first section (Act of July 1, 1902, c. 1369, Sec. 1, 32 Stat. 691):

> "The provisions of Section 1891 of the Revised Statutes of 1878[3] shall not apply to the Philippine Islands."

(2) The present Organic Act for the Philippine Islands, the "Jones Law" of August 29, 1916, c. 416, 39 Stat. 545, provides:

**Preamble**

> Whereas it was never the intention of the people of the United States in the incipiency of the War with Spain to make it a war of conquest or for territorial aggrandizement; and
>
> Whereas it is, as it has always been, the purpose of the people of the United States to withdraw their sovereignty over the Philippine Islands and to recognize their independence as soon as a stable government can be established therein; and
>
> Whereas for the speedy accomplishment of such a purpose it is desirable to place in the hands of the

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except when they specifically so provide, or it is so provided in this Act." (Act of August 29, 1916, c. 416, Sec. 5, 39 Stat. 545, 547; 48 U. S. Code, 1003; *Italics supplied.*)

---

[3] Section 1891 of the Revised Statutes provides:

"Sec. 1891. The Constitution and all laws of the United States which are not locally inapplicable shall have the same force and effect within all the organized Territories, and in every Territory hereafter organized, as elsewhere within the United States."

people of the Philippines as large a control of their domestic affairs as can be given them without, in the meantime, impairing of the rights of sovereignty by the people of the United States, in order that, by the use and exercise of popular franchise and governmental powers, they may be the better prepared to fully assume the responsibilities and enjoy all the privileges of complete independence: Therefore"

**Legislative and Taxing Powers**

"Sec. 3. That * * *.

"That * * *.

"That the rule of taxation in said islands shall be uniform."

"Sec. 5. That the statutory laws of the United States hereafter enacted shall not apply to the Philippine Islands, except when they specifically so provide, or it is so provided in this Act."

"Sec. 6. That the laws now in force in the Philippines shall continue in force and effect, except as altered, amended, or modified herein, until altered, amended or repealed by the legislative authority herein provided or by Act of Congress of the United States."

"Sec. 7. That the legislative authority herein provided shall have power, when not inconsistent with this Act, by due enactment to amend, alter, modify, or repeal any law, civil or criminal, continued in force by this Act as it may from time to time see fit.

"This power shall specifically extend with the limitation herein provided as to the tariff to all laws relating to revenue and taxation in effect in the Philippines."

"Sec. 8. That general legislative power, except as otherwise herein provided, is hereby granted to the Philippine Legislature, authorized by this Act."

"Sec. 10. That while this Act provides that the Philippine government shall have the authority to enact a tariff law the trade relations between the islands and the United States shall continue to be governed exclusively by laws of the Congress of the United States; *Provided*, That acts or acts amendatory to the tariff of the Philippine Islands shall not become law until they shall receive the approval of the President of the United States, nor shall any act of the Philippine Legislature affecting immigration or the currency or coinage laws of the Philippines become a law until it has been approved by the President of the United States: *Provided further*, That the President shall approve or disapprove any act mentioned in the foregoing proviso within six months from and after its enactment and submission for his approval, and if not disapproved within such time it shall become a law the same as if it had been specifically approved."

"Sec. 11. That no export duties shall be levied or collected on exports from the Philippine Islands, but taxes and assessments on property and license fees for franchises, and privileges, and internal taxes, direct or indirect, may be imposed for the purposes of the Philippine government and the provincial and municipal governments thereof, respectively, as may be provided and defined by acts of the Philippine Legislature, and, where necessary to anticipate taxes and revenues, bonds and other obligations may be issued by the Philippine government or any provincial or municipal government therein, as may be provided by law and to protect the public credit:"

"Sec. 12. That general legislative powers in the Philippines, except as herein otherwise provided, shall be vested in a legislature which shall consist of two houses, one the senate and the other the house of representatives, and the two houses shall be designated 'The Philippine Legislature': * * *."

"Sec. 19. That * * *.

"All laws enacted by the Philippine Legislature shall be reported to the Congress of the United States,

which hereby reserves the power and authority to annul the same."[4]

"Sec. 31. That all laws or parts of laws applicable to the Philippines not in conflict with any of the provisions of this Act are hereby continued in force and effect."

PHILIPPINE STATUTES:

Sections 1499[5] and 1502 of the Philippine Administrative Code (Philippine Act No. 2711, approved March 10, 1917) under which the taxes here involved were levied, together with the enacting clause of the Code, read as follows:

"For the purpose of adapting it to the Jones Law and the Reorganization Act, Act numbered two thousand six hundred and fifty-seven, known as The Administrative Code, is hereby amended in certain particulars; and said Act shall hereafter read as follows:

"Section 1. *Title of Act.*—This Act shall be known as the Administrative Code.

"Sec. 1499.[5] *Tax on capital, deposits, and circulations of banks.*—Subject to the exemption herein made there shall be collected from banks the following taxes on capital, deposits, and circulations:

"(a) Upon the capital employed by the bank, for each month, one twenty-fourth of one per centum.

"(b) Upon the average amount of deposits of money, subject to payment by check or draft, or represented by certificates of deposits, or otherwise, whether payable on demand, or on some future day, for each month, one-eighteenth of one per centum.

"(c) Upon the average amount of circulation issued by the bank, including as circulation all notes and

---

[4] Repealed May 29, 1928, Public 611, 70th Congress, c. 901, 45 Stat. 986, 996. Reinstated by Public 841, 70th Congress, 2nd Session, February 28, 1929, c. 364, 45 Stat. 1348.

[5] As amended by Act No. 3199.

other obligations calculated or intended to circulate or be used as money, but not including such as may be retained in the vault of the bank or redeemed and on deposit for said bank, for each month, one-twelfth of one per centum.

"(d) 'Bank' as herein used, includes every incorporated or other bank, and every person, association, or company having a place of business where credits are opened by the deposit or collection of money or currency subject to be paid or remitted upon draft, check, or order, or where money is advanced or loaned on stocks, bonds, bullion, bills or exchange, or promissory notes are received for discount or for sale.

" 'Capital employed' does not include money borrowed or received from time to time in the usual course of business from any person not a partner of or interested in such bank; and no tax shall be imposed on the capital employed by any person whose sole business is lending money on real-estate security.

"Sec. 1502. *Computing resources of bank incorporated abroad.*—The amount of capital used by a bank within the Philippine Islands, when such bank is a branch of a bank incorporated under laws of the United States or a foreign country, shall, for the purposes of assessment hereunder, be determined in the following manner: The total amount of the capital of the bank shall be ascertained, and, likewise, the total amount of the net earnings of the bank accruing during the preceding six months, and also the total amount of the net earnings accruing from the bank's business conducted in the Philippine Islands; and such a proportion of the total capital of the bank shall be deemed to have been employed in the Philippine Islands as the net earnings in the Philippine Islands bear to the total net earnings of the bank."[6]

**Other pertinent provisions of Acts of Congress and of Philippine statutes are in the Appendices** (*infra,* pp. 47-74).

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[6] These two Sections 1499 and 1502 of the present Administrative Code were reenactments without change of Sections 1654 and 1657 of the former Administrative Code,

**STATEMENT**

This was an action in the insular Court of First Instance of Manila by the respondent bank against this petitioner as Collector of Internal Revenue of the Philippine Islands to recover ₱77,324.11 paid by the respondent bank under protest on October 23, 1931, **"as deposit and capital taxes for the first half of the year 1931"** (R. 2). The plaintiff bank (respondent here) alleged in its complaint in the Court of First Instance (Par. II; R. 2-5):

> "That for the same period the Collector has demanded and received a return of income upon which income tax will be collected. That the Administrative Code of the Philippine Islands provides for the collection from all banks doing business in the Philippine Islands of deposit and capital taxes and Act 2833 as amended, provides for the collection of income taxes from all corporations and associations doing business in the Philippine Islands and deriving its income therefrom. That under the laws of the United States national banks are instrumentalities of the United States of America upon which no taxes may be levied except as provided by the laws of the United States of America. The law of the United States of America permitting the taxation of national banks (section 548, United States Code, annotated), reads as follows:" (*quoting Section* 548, Title XII, U. S. Code, Supp.; *which is* R. S. 5219 *as amended;* Appendix I, *infra,* pp. 54-55) "That there is no provision in the laws of the United States of America authorizing the Philippine government to tax a national banking association both upon its capital and deposits and also impose an income tax upon its earnings."

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Philippine Act No. 2657 of February 24, 1916 (*infra,* Appendix I, pp. 59-61), which was in force on August 29, 1916, the date of the enactment of the present Organic Act of Congress for the Philippines. The present Administrative Code, Act No. 2711, is, in form, simply an amendment of the former Administrative Code of 1916 (*ante,* p. 6), "for the purpose of adapting it to the Jones Law", the present Organic Act, and to the Philippine "Reorganization Act", Act No. 266.

The defendant Collector (this petitioner) in his answer in the Court of First Instance (R. 8) denied generally that the bank had any right of recovery, and insisted that the tax was properly collected under Section 1499 of the Philippine Administrative Code, as amended by Philippine Act 3199 (*ante*, pp. 6-7). The case came on for trial before the Court of First Instance on August 28, 1933, and, evidence oral and documentary was received, including copies of the articles of association of the respondent bank (R. 29-38), and of the order of the Federal Reserve Board, January 23, 1930, granting the bank's application for permission to establish branches in Manila and Cebu in the Philippine Islands ("Exhibit B", R. 39-43). The bank's by-laws were also offered in evidence ("Exhibit C", R. 48-61), and a "condensed statement of condition June 30, 1931, of The National City Bank of New York, including domestic and foreign offices" ("Exhibit D", R. 61-70), and a copy of the power of attorney to the manager of its Manila branch ("Exhibit E", R. 71-82), with a detailed statement of the monthly amounts of deposits and capital employed in the Manila Branch, for the six months ending June 30, 1931" ("Exhibit F", R. 83-112). Statements were also introduced showing how the amounts of the capital taxes and the deposit taxes respectively were computed ("Exhibits F to L", inclusive; R. 83-131). No question appears to have been made in the pleadings or at the trial or anywhere in the record of this case of the correctness and accuracy of the amounts of the taxes involved,—the "capital taxes" and the "deposit taxes" respectively,—or that they were properly computed and levied in accordance with the provisions of the Philippine statutes. The only question in this case is as to the power of the Philippine government to levy the taxes; that is to say as to the validity of the statute so far as it attempts to levy these taxes upon these "branches" in the Philippines of the National City Bank of New York.

## DECISION OF THE COURT OF FIRST INSTANCE

The "Decision" of the Court of First Instance, October 16, 1933 (R. 132-137), upheld the "capital taxes"; but held the "deposits taxes" invalid, and directed the refund of their amount, ₱61,219.43, to the plaintiff bank.

## OPINION OF THE PHILIPPINE SUPREME COURT

The Philippine Supreme Court divided. The majority opinion and the judgment of the court (BUTTE, J., R. 142-156, 174-175) affirms the judgment of the Court of First Instance insofar as that court held the "deposits taxes" invalid, but reverses it insofar as that court upheld the validity of the "capital taxes".

The effect of the judgment of the insular Supreme Court is, therefore, to hold the insular government without power to levy either the "capital taxes" or the "deposits taxes", —that is, that all of the taxes involved in this case, of both classes, are invalid, and beyond the power of the insular government to levy. The Chief Justice took no part in the decision (R. 156); and JUSTICE SANTOS (R. 156-161) filed a vigorous dissenting opinion.

## PETITIONER'S CONTENTION

Petitioner believes that both classes of the taxes here involved,—both the "capital taxes" and the "deposits taxes",—were validly levied; that it is within the power of the Philippine government to impose them; that the taxing section of the National Bank Act (R. S. 5219) does not run to the Philippine Islands; and that, therefore, there is no federal statute limiting the general legislative and taxing powers given to the Philippine Legislature by the Organic Act in relation to these taxes; and that there is no implied limitation on those powers, so far as these taxes are concerned. And that, therefore, the judgment of the Philippine Supreme Court in this case is wrong and should be reversed, and the taxes here involved held valid.

The single question is of the power of the Philippine government to tax Philippine branches of national banks of the United States.

## REASONS FOR GRANTING THE WRIT

This case presents an important question of federal law of wide general interest to national banks and to the business community, and especially to the government and the people of the Philippine Islands. The question here involved, of the power of the Philippine government to tax Philippine branches of national banks of the United States, is to be differentiated sharply from the question of the power of the Puerto Rican government to tax Puerto Rican branches of United States national banks, recently decided by this court in *Domenech, Treasurer*, v. *National City Bank of New York*, 294 U. S. 199. The statutory laws of the United States do run generally to Puerto Rico, including, as this court held in the *Domenech* case, the National Bank Act with its taxing section (R. S. 5219), as well as Section 25 of the Federal Reserve Act and the balance of that Act.

But the present case presents the different situation in the Philippine Islands, where by the direction of the Congress, both in the original "Foraker Act" of 1902 and in the present Organic Act, the statutory laws of the United States do not run generally to those Islands, but the contrary; and it is believed that neither the taxing section of the National Bank Act (now R. S. 5219 as amended) nor the balance of that Act, nor Section 25 of the Federal Reserve Act, runs to the Philippines at all; and, therefore, that there is no applicable limitation, as to banks, upon the general taxing and legislative powers given to the Philippine Legislature by the Congress by the Organic Act for those Islands. This presents an important question of federal law which has not been, and it is believed should be, settled by this court.

WHEREFORE, it is respectfully requested that this petition for a writ of certiorari be granted.

WILLIAM CATTRON RIGBY,
*Attorney for Petitioner.*

SERAFIN P. HILADO,
*Solicitor-General of the Philippine Islands,*
*Of Counsel.*

## BRIEF IN SUPPORT OF PETITION

### OPINIONS BELOW

The opinion of the Court of First Instance (R. 132-137) is not officially reported. The opinion of the Philippine Supreme Court (R. 142-156, majority opinion), with the dissenting opinion of Mr. JUSTICE SANTOS (R. 156-161), has not yet been officially reported.

### JURISDICTION

The jurisdiction of this court is invoked under Section 7 of the Act of February 13, 1925, c. 229, 43 Stat. 936, 940. The value in controversy here, ₱77,324.11 ($38,662.05; R. 2, 7, 132, 143, 175), exceeds $25,000; and the case also involves the construction and applicability of statutes of the United States, particularly the National Bank Act and its taxing section 41 (now R. S. 5219 as amended) and Section 25 of the Federal Reserve Act as amended, as well as those sections of the Organic Act for the Philippine Islands conferring general legislative and taxing powers on the Philippine government, and other related statutes concerning the status of the Philippine government and the extension of United States statutory laws to the Islands.

The final judgment of the Philippine Supreme Court was entered October 10, 1934 (R. 174-175). On April 3, 1935, JUSTICE SUTHERLAND made an order extending the time within which to apply to this court for a writ of certiorari until June 9, 1935 (R. 177; for sixty days after April 10th).

### QUESTION PRESENTED

The single question is stated in the petition (*ante*, p. 2).

### STATUTES INVOLVED

These are indicated in the petition and in the appendices (*ante*, pp. 3-7, Appendices, *infra*, pp. 47-74).

## STATEMENT

A statement of the case is in the petition (*ante,* pp. 8-10).

## SPECIFICATION OF ERRORS TO BE URGED

These are indicated under the headings "Question Presented" and "Petitioner's Contention" in the petition (*ante,* pp. 2 and 10-11).

## SUMMARY OF ARGUMENT

1. This case differs sharply from the Puerto Rican case of *Manuel V. Domenech, Treasurer of Puerto Rico* v. *National City Bank,* 294 U. S. 199, decided February 4, last, in that the statutory laws of the United States do not run generally to the Philippine Islands, as they do to Puerto Rico. The National Bank Act, including its taxing section 41, now R. S. 5219 as amended, is in force in Puerto Rico because by the Organic Act for that Island the Congress directed that the statutory laws of the United States not locally inapplicable should run there. But from the earliest days the policy of the Congress as to the Philippines has been directly to the contrary. The Foraker Act of 1902, the first Organic Act, directed that the section of the Revised Statutes, Sec. 1891, extending the statutory laws of the United States to the Territories generally *should not be in effect in the Philippines;* and that was followed up by the "Jones Law" of August 29, 1916, the present Organic Act, which after declaring in its preamble the purpose of the people of the United States to withdraw their sovereignty from the Philippine Islands and to recognize their independence as soon as a stable government could be established, reciting that for that purpose it was necessary to place in the hands of the Philippine peoples as large a control over their domestic affairs as was practicable without impairing the sovereignty of the United States, directed, in Section 5 of the Act, that "the statutory laws of the United States hereafter enacted shall not

apply to the Philippine Islands, except when they specifically so provide, or it is so provided in this Act". The National Bank Act has never been extended to the Philippine Islands, and is not in force there; and hence the limitations upon the taxing powers of States in relation to national banks contained in its taxing Section 41, now R. S. 5219, are not in force there, and do not in any way affect the general taxing powers of the Philippine Government with relation to banks doing business in the Islands, whether branches of national banks of the United States or foreign banks or domestic banks of the Islands.

2. The general legislative powers, including the taxing powers, reposed in the Philippine Legislature by the Organic Act, subject to the command of the Congress in Section 3 of that Act, *"That the rule of taxation in said islands shall be uniform"*, apply alike to all banks and other financial institutions and corporations doing business in those Islands. There is no exception or exemption with relation to branches of national banks. Nor can it properly be presumed that the Congress intended such branches to be exempted from taxation as "instrumentalities of the United States". Since there is no express exemption by any Act of Congress, and since the taxing section (R. S. 5219 as amended) of the National Bank Act has not been extended to the Islands, any such a presumption, if it were to be indulged, would exempt branches of national banks, not only from the insular "capital taxes" and "deposits taxes" here in question, *but also from all other insular taxation*,—the real estate tax, and the income tax, equally with the taxes here in question; since, outside of the taxing section of the National Bank Act which does not run to the Islands, there is no ground for maintaining any distinction whatever between the different classes of taxes levied by insular legislation. The rule that a "dependency may not tax its sovereign" is qualified by the *proviso* that it may do so with the sovereign's consent; so that the whole ques-

tion is really whether or not the Congress has impliedly given its consent. The presumption that the Congress does not intend that an agency or an instrumentality of the United States may be taxed by the subordinate government of a Territory or of a dependency applies with but limited force in the case of a bank; which is primarily a corporation for profit and is only secondarily or in a limited sense an agency of the federal government in some of its fiscal operations. The Congress has established a separate coinage and currency system for the Philippine Islands, as well as separate tariff and immigration laws. It has authorized the insular Legislature to guarantee the income of the insular Agricultural Bank, afterwards merged into the Philippine National Bank, a truly national bank for the Islands, an arm of the insular government, in a more effective sense than are United States "national banks". It has not extended the National Bank Act, nor its taxing section, to the Islands; and it has granted the insular Legislature general legislative and taxing powers, and has declared without qualification that "the rule of taxation in the islands shall be uniform". It has not expressly exempted the Philippine branches of national banks of the United States from that rule of uniformity; nor even expressly extended to the Islands the provision of Section 25 of the Federal Reserve Act, authorizing the establishment of branches of national banks in dependencies and insular possessions of the United States. The present insular legislation, under which the taxes here in question were levied, was in force in the Islands in almost exactly the same identical form as at present, in Sections 1654 and 1657 of the former Administrative Code of the Islands (Act No. 2657; approved February 24, 1916) when the Congress adopted the present Organic Act of August 29, 1916, and by Section 6 of that Act expressly continued "the laws now in force in the Philippines", "in force and effect, except as altered, amended, or modified herein", without making any exception of those bank tax sections of the Administrative Code. And they have been

in force in the Islands ever since. In view of these facts, and of the fact,—of which the Congress must be presumed to have been aware,—that, in the absence of any extension to the Islands of the taxing section of the National Bank Act, Philippine branches of United States national banks *cannot be taxed at all by the insular government by any form of taxation* and will, therefore, enjoy such a business advantage as practically to give them a banking monopoly in the Islands, *unless the Congress intended to extend the insular government's general taxing powers to them* regardless of their being "instrumentalities of the Federal government" for some fiscal purposes,—it is not to be presumed that the Congress intended to stretch a presumption to any such length; but on the contrary that it intended the insular government's general taxing powers to extend to those branch banks.

3. As already noted, the Congress by Section 6 of the Organic Act of August 29, 1916, expressly recognized and continued in force the laws then in force in the islands. This ratification included Sections 1654 and 1657 of the former Administrative Code then in force, and since reenacted in identical form, under which the taxes here in question were levied. That ratification was of course within the powers of the Congress.

4. Since Section 25 of the Federal Reserve Act authorizing the Federal Reserve Board to permit the establishment of branches of national banks in foreign countries and in "dependencies and insular possessions" of the United States does not expressly mention the Philippine Islands, and has never been expressly extended to those Islands, it is not in force there, any more than is the taxing section of the National Bank Act or any other part of the National Bank Act. It follows that the attempted license from the Federal Reserve Board to the National City Bank to establish branches in Manila and in Cebu in the Islands, offered in evidence by the bank here (R. 42-43), is wholly

void, of no effect whatever, and gives no authority for the establishment or existence of these branches in the Philippine Islands. Whatever else these so-called "branches" of the National City Bank in the Philippine Islands may really be,—if there is any legal authority whatever for their existence at all,—they are not really branches of the National City Bank of New York under Section 25 of the Federal Reserve Act or any other Act of the United States. They owe their existence in the Philippine Islands, and their continued tolerance there, wholly to Philippine law. Whether they are to be looked upon as foreign banks within the islands, or as *de facto* domestic banks of the Islands, existing and carrying on business under Philippine law,—in any event they are not, in any proper sense, "branches" of a national bank of the United States existing under any license of the Federal Reserve Board; since the Board has no power,—and never has had any power,—to license a branch bank in the Philippine Islands. The only power of the Board to license a branch of a national bank to be located outside of the continental United States,—or for any such branch to be organized or to exist or to carry on business under any law of the United States,—is Section 25 of the Federal Reserve Act as amended, which does not authorize such a branch in the Philippine Islands, because the Act does not expressly mention those Islands, and it has never been extended there.

5. It follows that there is no federal limitation whatever preventing the insular government from levying the taxes here in question upon these so-called Philippine "branches" of the National City Bank of New York; that the taxes are valid; and that the judgments of the Supreme Court of the Philippine Islands and of the Court of First Instance of Manila should be reversed and this case remanded with directions to dismiss the action at plaintiff's costs.

## ARGUMENT

### POINT I

**Neither the taxing section of the National Bank Act nor any other part of that Act, nor Section 25 of the Federal Reserve Act, runs to the Philippine Islands.**

A.—This case differs sharply from the Puerto Rican case of *Manuel V. Domenech, Treasurer of Puerto Rico* v. *The National City Bank of New York*, 294 U. S. 199, recently decided by this court. The statutory laws of the United States not locally inapplicable run generally to Puerto Rico, by virtue of the provisions of Section 9 of the Organic Act for Puerto Rico,[7] including the National Bank Act with its taxing Section 41, now R. S. 5219 as amended, and the Federal Reserve Act including its Section 25 authorizing the Federal Reserve Board to license branches of United States national banks to be established in foreign countries and in "dependencies or insular possessions of the United States" and therein "to act if required to do so, as fiscal agents of the United States" (*Domenech* v. *National City Bank, supra*, 294 U. S. 199, 204, 205). But directly to the contrary, the statutory laws of the United States do not run generally to the Philippine Islands.[8]

The policy of the Congress with relation to the Philippine Islands has, from the beginning, differed sharply from that with relation to Puerto Rico as well as from that with relation to Hawaii and the former Territories here in the mainland United States which it was always understood were on their way to ultimate Statehood. From the begin-

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[7] Act of March 2, 1917, c. 145, 39 Stat. 952, 954; 48 U. S. Code 734.

[8] Philippine Organic Act of August 29, 1916, c. 416, Section 5, 39 Stat. 545, 547; 48 U. S. Code 1003. Former Organic Act for the Philippines, "Foraker Act", Act of July 1, 1902, c. 1369, Section 1, 32 Stat. 691; *ante*, p. 3.

ning it has apparently been the policy of the Congress to prepare the Philippine Islands for ultimate independence from the United States; and its legislation with respect to them has differed accordingly from that with respect to Puerto Rico and the Territories. Accordingly, in harmony with that general policy of differentiating the status of the Philippine Islands, the original Organic Act for those Islands, the "Foraker Act" of July 1, 1902, omitted the provision usually found in territorial organic Acts, — and which was incorporated in substance in the original Organic Act for Puerto Rico,[9] as well as in the present Organic Act for that island.[10] But in dealing with the Philippine Islands the Congress provided, directly to the contrary, in the first Organic Act, the Philippine "Foraker Act" of July 1, 1902, c. 1369, Section 1, 32 Stat. 691, that Section 1891 of the Revised Statutes should not be in force in those islands,[11] and followed that up by providing in Section 5 of the present Organic Act, the "Jones Law" of August 29, 1916, c. 416, 39 Stat. 545, 547:

> "That the statutory laws of the United States hereafter enacted shall not apply to the Philippine Islands, except when they specifically so provide, or it is so provided in this Act."

The Philippines, of course, like all other territories belonging to the United States, are subject to the plenary power of the Congress under Clause 2 of Section 3 of Article IV of the Constitution, to:

"make all needful Rules and Regulations respecting

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[9] "Foraker Act for Puerto Rico", Act of April 12, 1900, c. 191, Sec. 14, 31 Stat. 77, 80.

[10] Act of March 2, 1917, c. 145, section 9, 39 Stat. 951, 954; 48 U. S. Code 734.

[11] Section 1891 of the Revised Statutes is the section providing generally that the Constitution and laws of the United States shall be in force in every organized Territory; *supra*, p. 3, *foot-note* 3.

the Territory or other Property belonging to the United States";

but the Constitution is self-executing in them only insofar as it protects the fundamental rights of free men. (*Balzac* v. *Porto Rico*, 258 U. S. 298, 305, 312-313, accepting as "the settled law of the court" the doctrine of the separate concurring opinion of WHITE, J., in *Downes* v. *Bidwell*, 182 U. S. 244, 290-291.) With that limitation the Congress may in its discretion adopt for any territory belonging to the United States such laws and "Rules and Regulations" as it may deem fit; **and may or may not, as it shall determine to be best from time to time, extend to any territory the operation of any statute or law of the United States.**

**B.—From the beginning of the government, the Congress has freely exercised this power.**

The former Territories within the continental United States which have since been erected into States, were from the first generally understood to be destined for Statehood. Hence it early became the habit of the Congress to provide in their Organic Acts that all of the laws of the United States not locally inapplicable should be in force within the Territory; although, in the very beginning, it did not do so, but, instead, inserted in the Organic Act a list of those of its Acts which should be in force within the particular Territory.[12] Examples are Section 7 of the Act establishing the Territory of Orleans, now the State of Louisiana, Act of March 26, 1804, c. 38, 2 Stat. 283, 285, and Section 9 of the Organic Act of Florida, Act of March 30, 1822, c. 13, 3 Stat. 654, 657 (Appendix II,

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[12] A resumé is in Appendix II of the action of the Congress in the various territorial organic Acts prior to the time when Puerto Rico and the Philippines came to the United States by the Spanish War, with reference to extending particular Acts of Congress, or the statutory laws of the United States generally, to the various Territories (*infra*, pp. 62-66).

*infra*, pp. 62-64); but in the Florida Act there was added, at the end of the list, a general clause, —*"and all other Public Laws of the United States, which are not repugnant to the provisions of this Act"* (3 Stat. *supra*, at p. 658); and in the Organic Act for Wisconsin it was broadly declared that "the laws of the United States are hereby extended over, and shall be in force in, said Territory, so far as the same, or any provisions thereof, may be applicable" (Act of April 20, 1836, c. 54, Sec. 12, 5 Stat. 10, 15; Appendix II, *infra*, p. 64). Such a general extension continued thereafter to be the habit, and was embodied in the "Provisions Common to all the Territories" in Title XXIII of the Revised Statutes of 1873, as Section 1891, reading:

> "The Constitution and all laws of the United States which are not locally inapplicable shall have the same force and effect within all the organized Territories and in every Territory hereafter organized as elsewhere within the United States."

That section was re-published without change in the 1878 edition of the Revised Statutes (*ante*, p. 3, *foot-note* 3). Its effect was to incorporate all of the organized Territories into the Union. It was based upon the general understanding that all of the Territories were destined for Statehood; and it was in force at the outbreak of the Spanish American War, and when by the treaty of peace at its conclusion Puerto Rico and the Philippines were ceded to the United States, and when, at about the same time, Hawaii was annexed.

**C.—But, as above pointed out, in dealing with the new Territories thus acquired outside of the limits of the continental United States, the Congress from the outset made a sharp differentiation between the Philippine Islands on the one hand and the other newly acquired territories on the other hand,** in relation to extending to them the laws of the United States, and in relation to the apparent purpose of the Congress concerning their ultimate destiny. To Hawaii it extended Section 1891 of the Revised

Statutes in full force, thereby extending to that Territory not only the laws of Congress but also the Constitution in its full force, and thereby definitely "incorporating" Hawaii into the Union. (Organic Act of Hawaii, Act of April 30, 1900, c. 339, Sec. 4, 39 Stat. 141; *Hawaii* v. *Mankichi*, 190 U. S. 197, 211, 220). And likewise as to Puerto Rico, while the Constitution in its full force was not extended to that island,— and Puerto Rico is, therefore, not "incorporated" into the Union (*Balzac* v. *Porto Rico*, *supra*, 258 U. S. 298, 305-314),— yet as above pointed out, by the first Organic Act for that Island, the "Foraker Act" of April 12, 1900, c. 191, Sec. 14, 31 Stat. 77, 80, it was provided:

> "That the statutory laws of the United States not locally inapplicable, except as hereinbefore or hereinafter otherwise provided, shall have the same force and effect in Porto Rico as in the United States, except the internal revenue laws";

and afterward by the present Organic Act for that Island, the Act of March 2, 1917, c. 145, Sec. 9, 39 Stat. 951, 954 (*supra*, p. 2) that provision was re-enacted and continued in force, and further by Section 5 of that Act (39 Stat. at p. 953), United States citizenship was extended to the citizens of Puerto Rico.

**D.—But as to the Philippine Islands,** directly to the contrary, the Congress provided by the first Organic Act for those islands, as already pointed out (Act of July 1, 1902, c. 1369, Sec. 1, 32 Stat. 691, 692; *supra*, pp. 2-3) that:

> "The provisions of Section 1891 of the Revised Statutes of 1878 *shall not apply* to the Philippine Islands" (*italics supplied*);

and followed that up fourteen years later by the provision of Section 5 in the present Organic Act of August 29, 1916, hereinbefore quoted (*supra*, p. 4), expressly directing that the statutory laws of the United States enacted after that date "*shall not apply to the Philippine Islands, except when they specifically so provide, or it is so provided in this*

*Act''*. And in the meantime, the Congress, instead of extending the United States tariff laws to the Philippine Islands, had by the Act of August 5, 1909, c. 8, 36 Stat. 130 (Appendix I, *infra,* pp. 51-52), created a separate tariff system for those Islands; and by Section 10 of the present Organic Act of August 29, 1916, (*supra,* p. 5), it granted to the Philippine Legislative power, with the approval of the President, to modify the tariff laws for the Islands at any time and to adopt new tariffs for themselves; and likewise the authority, with the approval of the President, to modify the immigration laws and the currency and coinage laws of the Islands (39 Stat. at p. 548; *supra,* p. 5). And the Congress gave the Philippine Islands their own separate monetary unit, the peso instead of the dollar, and their own separate coinage and currency system, (''Foraker Act'', *supra,* Secs. 76-79; Act of March 2, 1903, as amended; Appendix I, *infra,* pp. 47-48). And in framing the judicial system for the Philippines, no United States courts were instituted, and no United States Attorney. In Puerto Rico, as in the Territories, there is a United States District Court and a United States District Attorney under the supervision of the Attorney General of the United States (Organic Act for Puerto Rico, Sec. 41, c. 145, 39 Stat. 951, 965); and in Hawaii there is likewise a District Court which the Congress has recognized as ''the United States District Court for Hawaii'' (Organic Act for Hawaii, Act of April 30, 1900, c. 339, Sec. 86, 31 Stat. 141, 158; and Par. ''Second'', Sec. 128(a) of the Judicial Code as amended by the Jurisdiction Act of February 13, 1925, c. 229, 43 Stat. 936). But in the Philippines there is no United States District Court, nor anything corresponding to it, and no United States District Attorney. There is in those Islands but the one system of insular courts,—the local municipal courts, the Courts of First Instance, and the insular Supreme Court (Organic Act for the Philippine Islands, *supra,* Act of August 29, 1916, c. 416, Secs. 26 and 27, 39 Stat. 545, 555).

And the customs service in the Philippine Islands is not under the jurisdiction of the Secretary of the Treasury. The insular collector of customs is, and from the beginning has been, an official of the insular government. (Tariff Act for the Philippine Islands, *supra,* Act of August 5, 1909, c. 8, Sec. 25, 36 Stat. 130, 177; *Wright, Auditor,* v. *Ynchausti,* 272 U. S. 640, 646-651).

**E.—The underlying reason for all these differences that the Congress has thus consistently maintained between the Philippine Islands on the one hand and the other Territories and territorial governments on the other, is plain from the preamble to the present Organic Act for those islands** ("Jones Law", Act of August 29, 1916, c. 416, 39 Stat. 545; *supra,* pp. 3-4) declaring,

> **"Whereas, it is, as it always has been, the purpose of the United States to withdraw their sovereignty over the Philippine Islands, and to recognize their independence as soon as a stable government can be established therein";**

and is emphasized by the recent Act offering independence to the Philippines (Act of March 24, 1934, c. 84, 48 Stat. 456), which has now been accepted by the Philippine Legislature and also by the Philippine people themselves at their recent plebiscite adopting the new Constitution for the Philippine Commonwealth, so that the Philippine Islands are now on their way out from the jurisdiction of the United States and toward their own independent sovereignty.

**F.—Wherever the Congress has desired a statute of the United States to extend to the Philippine Islands, it has been its uniform policy specifically to direct that the particular statute should run to and be in force in the Islands.** Thus for example by Section 76 of the "Foraker Act" of July 1, 1902, it expressly extended "the laws of the United States relating to mints and coinage, so far as applicable", "to the coinage of said Islands" (39 Stat. at p. 710; Appendix I, *infra,* p. 47); and by the Act of February 6, 1905, c. 454, 33 Stat. 698, the Congress directed that the provisions of Sections 5270 to 5277 of the

Revised Statutes relating to extradition, "so far as applicable, shall apply to the Philippine Islands"; and, again, by the Act of June 15, 1917, enacted during the war, that certain sections of the neutrality laws of the United States should be extended to the Philippine Islands (Act of June 15, 1917, c. 30, Title XIII, Sec. 2, 40 Stat. 217). **But the Congress has never enacted any statute broadly extending the laws of the United States generally to the Islands in any way;** and, as illustrative of its policy toward the Islands, it has not usually included them in the recent emergency reconstruction and relief Acts passed during the past few years, although some of the provisions of a few of those Acts have been expressly extended to the Islands. Thus, for example, when the Congress determined to extend to the Philippine Islands the 15% cut in the salaries of insular officials appointed by the President, it specifically named those Islands in the Act, directing (Independent Offices Act of June 16, 1933, c. 101, Sec. 12, 48 Stat. 283, 307):

> "Sec. 12. From the date of the approval of this Act and until July 1, 1934, the compensation of all officers and employees of the insular possessions of the United States, *including the Philippine Islands*, which is now fixed by the Acts of Congress * * *, is hereby reduced fifteen per centum:" (*Italics supplied*).

**G.—In view of this established purpose of the Congress thus manifested** (1) by its express direction in Section 5 of the present Organic Act of the Islands (*ante*, p. 4), that the statutory laws of the United States thereafter enacted shall not apply to the Philippines, except when they specifically so provide, "or it is so provided in this Act", (2) by its direction in Section 1 of the former Organic Act of 1902 ("Foraker Act", *supra*, p. 3) that the section of the Revised Statutes, Sec. 1891, extending the laws of the United States to the Territories generally should not be in force in the Philippine Islands, and (3) by the practice of the Congress itself expressly to extend to those islands by

name or specific designation any federal statute which it desires to put into force there, **the Attorney General of the United States, in consonance with established practice of most of the executive departments of the federal government has uniformly held that federal statutes, which do not specifically name the Philippine Islands, do not extend to those Islands, even though they do contain general language extending them to the "insular possessions" or to "places" or "territories under the jurisdiction of the United States", so long as they fail specifically to name the Philippine Islands.** Thus, for example, the Attorney General has held that the Narcotic Drugs Act of May 26, 1922, c. 202, 42 Stat. 596, does not extend to the Philippine Islands, although Section 2(b) of that Act provides broadly:

> "That it is unlawful to import or bring any narcotic drugs into the United States *or any territory under its control or jurisdiction*" (*Italics supplied*);

and that the National Prohibition Act, the *Volstead* Act of October 28, 1919, c. 85, 41, Stat. 305, 307 *et seq.*, did not run to the Philippine Islands, for similar reasons, broad as its general language was; and, quite recently, that the National Industrial Recovery Act of June 16, 1933, c. 90, 48 Stat. 195, did not extend to the Philippine Islands, in spite of the broad language in Section 7(d) of that Act covering "the District of Columbia or any Territory of the United States", and "any insular possession or other place under the jurisdiction of the United States". (NARCOTIC DRUGS ACT, 34 Ops. Atty. Gen. 550, 551-553, October 17, 1925; NATIONAL PROHIBITION ACT, 32 Ops. Atty. Gen. 258, 259, June 24, 1920; NATIONAL INDUSTRIAL RECOVERY ACT,—Ops. Atty. Gen. Advance Sheets Dec. 2, 1933).

In his opinion with reference to the Narcotic Drugs Act, holding that it does not run to the Philippine Islands, the Attorney General, after quoting the language of Section 2(b) of the Act,

> "That it is unlawful to import or bring any narcotic drug into the United States *or any territory un-*

*der its control or jurisdiction"* (c. 202 Sec. 2(b), 42 Stat. 596; *Italics supplied*),

said (34 Ops. Atty. Gen. 550, 551-553, *supra*):

> "While ordinarily such language might be construed as embracing the United States and all of its possessions, such interpretation is not permissible when the language is measured by the test laid down in the Act of August 29, 1916, above set forth. The Narcotic Drugs Import and Export Act will be searched in vain for any language disclosing that it 'specifically' provides that it shall apply to the Philippines. * * *
>
> "Additional support for the views above expressed is to be found in what may now be regarded as the well-settled manner in which Congress expresses its intention when it desires any of the Federal laws to be operative in the Philippines. In section 23 of the Income Tax Act of September 8, 1916 (39 Stat. 776), it is provided that the provisions of that Act shall extend to the 'Philippine Islands'. The Act also confers jurisdiction upon 'courts of the first instance of said Islands', and places the administration of the law so far as the Act is concerned upon the officers of these Islands. The so-called National Defense Act of June 15, 1917 (40 Stat. 217, 231), specifically confers upon the 'courts of first instance in the Philippine Islands' jurisdiction of the offenses under that Act committed within the Philippines. That Act also provides that the District Attorneys of the Philippine Islands 'shall have the powers and perform the duties provided in this Act for United States Attorneys.' In section 2 of the Narcotic Act of December 17, 1914 (38 Stat. 785, 787), it is provided that in 'the Philippine Islands administration of this Act' shall be looked after by the local internal revenue officers. The Act further provides that 'the courts of first instance in the Philippine Islands shall possess and exercise jurisdiction in all cases arising under this Act in said Islands'. In the Immigration Act of February 5, 1917 (39 Stat. 874), it is provided that 'this Act shall be enforced in the Philippine Islands by officers of the general government thereof.' In the Trading with the Enemy Act of

October 6, 1917 (40 Stat. 411, 425), it is provided that the several courts of first instance in the Philippine Islands shall have jurisdiction of offenses committed under the Act within their territory. These several illustrations, considered in the light of restrictive provisions of Section 5 of the Act of August 29, 1916, *supra,* seem to forbid the extension of the Narcotic Drugs Import and Export Act to the Philippines. Also pertinent is the opinion of my predecessor (32 Op. 258), holding that section 5 of the Act of August 29, 1916, *supra,* prevented the operation of the liquor laws of the United States in the Philippines, although those laws otherwise might fairly have been interpreted to apply to such Islands.

"In conclusion, it seems proper to state that even though the correct interpretation of the Narcotic Drugs Import and Export Act were more doubtful than I find it to be, it would nevertheless be necessary to resolve that doubt against the application of the law to the Philippines **in view not only of the provisions of section 5 of the Act of August 29, 1916, supra, but also because of the provisions in section 1 of the Act of July 1, 1902 (32 Stat. 691), in which Congress specifically withheld from the Philippine Islands the application of section 1891 of the Revised Statutes, thus expressing its intention that the laws of the United States should not apply to the Philippines unless the intention to that effect was clearly expressed.** It may also be added that there appears to be nothing in the legislative history of the Narcotic Drugs Import and Export Act which discloses any specific intention that said laws should apply in the Philippines."

Since the Congress has never seen fit to extend either the National Bank Act or the Federal Reserve Act, nor any part of either of those Acts, to the Philippine Islands, it follows that neither of those Acts is or ever has been in force there. And of course, *a fortiori,* that neither Section 41 of the National Bank Act, its taxing Section (now R. S. 5219 as amended), nor Section 25 of the Federal Reserve Act authorizing the establishment of branches of national banks in "dependencies or insular possessions of

the United States" by permission of the Federal Reserve Board, is in force in those Islands, or ever has been.

*H.—Neither the taxing section of the National Bank Act nor any other part of that Act has ever been extended to the Philippine Islands.*

The Act was in effect in the United States long before the American occupation of the Islands. It was originally enacted in 1864, and was carried into Section 5219 of the Revised Statutes in 1873 (Appendix I, *infra*, p. 54). It extended to the organized Territories of the United States, both by virtue of Section 1891 of the Revised Statutes and also because by Section 1 of the Act itself the Congress indicated its intention that a national bank might be organized in any Territory or in a "District" (the District of Columbia), as well as in any State. *Talbott* v. *Silver Bow County Commissioners*, 139 U. S. 438, 443-444, decided March 30, 1891, before there were any insular possessions.[13]

This taxing section, Section 41 of the original Act of

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[13] Where this court, speaking by Mr. JUSTICE BREWER, said:

> "Further, it is a general rule in the construction of statutes that when in the earlier and declaratory section the scope and extent of the power and privileges granted are once stated, the character of the grant as thus disclosed controls and interprets all subsequent sections; and it is unnecessary in each subsequent section to restate or use words and expressions which shall fully disclose the extent of those powers and privileges; * * *. So, when, in the sections providing for the incorporation of national banks, the thought of their existence in States and Territories alike is affirmed, the character and extent of the banking system are disclosed; and subsequent sections must be taken to be in support, rather than in derogation, of the national feature of this national system."

*But the Congress has never extended this "national system" to the Philippines.*

June 3, 1864, carried into Section 5219 of the Revised Statutes, has been amended twice. *Both of these amendments are since the enactment of the present Organic Act for the Philippine Islands.* One of them was by the Act of March 4, 1923, c. 267, 42 Stat. 1499, and the other by the Act of March 25, 1926, c. 88, 44 Stat. 223; Appendix I, *infra,* pp. 54-55. *In neither of these amendments were the Philippine Islands specifically mentioned.* And, consequently, the Act as it now stands does not specifically mention those Islands (*infra,* p. 55). It follows clearly that it has never been the intention of the Congress to extend that statute to those Islands.

I.—AS TO THE FEDERAL RESERVE ACT, including particularly its Section 25 authorizing the Federal Reserve Board to approve applications of national banks of the United States to establish so-called "foreign branches" outside of the States and Territories and the District of Columbia,—that Act was first passed on December 23, 1913 (c. 6, 38 Stat. 251, 273, Appendix I, *infra,* pp. 55-56), and Section 25 as then enacted simply authorized the Federal Reserve Board to approve the application of any national banking association possessing a capital and surplus of $1,000,000 or more *"to establish branches in foreign countries or dependencies of the United States".* There was no specific reference to the Philippine Islands. **But the significant thing is that only nine days after the enactment of the "Jones Law", the present Organic Act for the Philippine Islands** of August 29, 1916, with its Section 5, specifically prescribing as above quoted, *"That the statutory laws of the United States hereafter enacted shall not apply to the Philippine Islands, except when they specifically so provide, or it is so provided in this Act"* (39 Stat. 545, 547; *ante,* p. 4), THE CONGRESS AMENDED SECTION 25 OF THE FEDERAL RESERVE ACT of September 7, 1916,[14] by **inserting** the words **"or insular possessions"**

[14] Act of September 7, 1916, c. 461, 39 Stat. 752, 755; Appendix I, *infra,* p. 56.

after the word "dependencies", *and made no other change in the phraseology of that section of the Federal Reserve Act.* **And made no reference to the Philippine Islands.**

*This action of the Congress, in making that amendment in that way, only nine days after the enactment of the new Organic Act for the Philippine Islands, without mentioning the Philippine Islands in the amendment, seems to be the very plainest kind of an expression of its will by the Congress not to extend that section of the Federal Reserve Act to those Islands.*

Plainly, had it been its will that that section of the Federal Reserve Act should run there, it surely would have expressly mentioned the Philippine Islands when amending the section only nine days after so definitely laying down the rule in Section 5 of the new Organic Act for the Islands on August 29, 1916, that no law thereafter enacted should run to those Islands, unless it specifically so declared;—instead of thus amending Section 25 only nine days later, and saying merely *"insular possessions"* and *"dependencies"*, as it did. And again, when three years afterwards it once more amended Section 25 of the Federal Reserve Act, by Section 2 of the Act of September 17, 1919 (c. 60, 41 Stat. 285, 286; 12 U. S. Code, 601) it still retained the same phraseology *"in foreign countries or dependencies or insular possessions of the United States"*, **and once more saw fit not specifically to mention the Philippine Islands, and not specifically to extend the Act to those Islands.**

*The conclusion is irresistible that it was the deliberate intent of the Congress not to extend the Federal Reserve Act to those Islands.* This conclusion is reinforced when it is borne in mind that (1) as above pointed out the Congress had theretofore authorized the Philippine government to guarantee the income of the Philippine Agricultural Bank, afterwards merged into the Philippine

National Bank, owned and directly controlled by the Philippine Government, a truly national bank for the Islands, Appendices I and III, *infra,* pp. 50-51 and 67-68; (2) that the Congress must be presumed to have been aware of the existence of the Philippine National Bank and that it was practically a branch of the insular government (Philippine Acts 2612, 2747, 2938 (Appendix III, *infra,* pp. 67-74) and cognate Acts; and (3) that administratively the Federal Reserve Act was apparently regarded, at least for a long time, as not authorizing branches of national banks in the Islands. At any rate it does not appear that the Federal Reserve Board ever licensed any branches of national banks in the Philippine Islands during all the years since the Act was first passed in 1913, until 1930 when it approved the application of the respondent here, the National City Bank of New York, for the establishment of these branches in Manila and Cebu (R. 42-43).

## POINT II

**There is no federal statute limiting the general taxing power of the insular government over Philippine branches of national banks of the United States, or over any other banks in those islands, except the provision of Section 2 of the Organic Act that "the rule of taxation in said islands shall be uniform".**

As said above (Point I, *ante,* pp. 18-31), the taxing section of the National Bank Act is not in force in those Islands, and never has been. There is no other federal statute in force there relative to the taxation of banks, either of branches of national banks of the United States or other banks, *except* the provisions of the Organic Act of the Congress endowing the Philippine Legislature with general legislative and taxing powers,[15] subject only, so far as relates to anything pertinent here, to the limitation above

[15] Organic Act, Secs. 6, 7, 8, 10, 11 and 12; *ante,* "Statute", pp. 4-5.

quoted in Section 3 of the Organic Act, "that the rule of taxation in said islands shall be uniform" (*ante*, p. 4).

It has never been even suggested in this case that the taxes here involved violate that rule of uniformity in any way. There is, therefore, no federal statute in force in the Islands prohibiting the insular Legislature from providing for, — or the insular government from levying and collecting, — the taxes here involved.

## POINT III

**There is no implied prohibition preventing the Philippine Government from levying these taxes, or collecting them.**

A.—The taxes involved are the "capital taxes" and the "deposits taxes". No question has ever been made in this case but that both these taxes were levied and collected in strict accordance with the provisions of the Philippine statutes.[16]

B.—Since the taxing section of the National Bank Act does not run to the Philippine Islands, as above pointed out in the preceding Points of this argument, and since there is no other federal statute expressly limiting in any way the power of the Philippine Legislature to levy these taxes in the exercise of the general legislative powers and taxing powers given it by the Organic Act,[17] it necessarily follows that the taxes here involved are valid, *unless* there is some implied prohibition or limitation against or upon the power of the Philippine Legislature to impose them. *The only possible such prohibition or limitation that has been suggested in this case is a presumption that the Congress did not intend* that "a derivative sovereignty like the government of the Philippine Islands could tax the instrumentalities of the very government which brought it into existence". That was the basis, at least in part, of the deci-

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[16] Administrative Code, Secs. 1499 and 1502.

[17] *Ante*, pp. 4-5.

sion of the majority of the Philippine Supreme Court holding these taxes beyond the power of the Philippine government (R. 152-153). But, as the insular Supreme Court there recognized, the Congress may, of course, give its consent. **It comes back, therefore, to the question, simply, what was the intention of the Congress?** The presumption that a derivative sovereignty is not intended to tax instrumentalities of the superior sovereign, is after all only a rebuttable presumption; and, like other rebuttable presumptions, is only to be used as an aid in arriving at the true facts,—here as an aid in arriving at the real intent of the Congress.

C.—We are not unmindful that this court said in the Puerto Rican case, *Domenech*, Treasurer, v. *National City Bank, supra*, 294 U. S. 199, 205;

> "But like a State, though for a different reason, such an agency may not tax a federal instrumentality. * * *. A Territory or a possession may not do so because the dependency may not tax its sovereign. True the Congress may consent to such taxation; but the grant to the Island of a general power to tax should not be construed as a consent. Nothing less than an Act of Congress clearly and explicitly conferring the privilege will suffice. Not only do we find no such statutory consent but we are confronted by R. S. 5219, which *proprio vigore* extends to Territories, and the Congressional declaration that it, like other statutes of the United States shall, if not locally inapplicable, apply to Puerto Rico";

but, as appears from the above quotation, that was said in relation to a very different situation from that presented here.

As there said, in the Puerto Rican case, the court was "confronted by R. S. 5219, which *proprio vigore* extends to Territories, and the Congressional declaration that it, like other statutes of the United States shall, if not locally inapplicable, apply to Puerto Rico."

**But that situation was directly opposite, or contrary, to that**

with which we are dealing here; where, as we have already shown in the preceding Points of this argument, that statute, R. S. 5219, *does not run in the Philippines,* and the Congressional declaration in the Philippine Organic Act is directly to the contrary of that in the Puerto Rican Act; and is, that statutes of the United States *shall not apply* in the Philippine Islands "except when they specifically so provide, or it is so provided in this Act"; that is to say, unless the particular Act has been specifically extended to the Islands by the Congress,—which is not the case with either the National Bank Act or the Federal Reserve Act.

D.—Coming back then to the question of the actual intent of the Congress,—whether or not it was the Congressional intent that the presumption that a subordinate sovereignty should not tax instrumentalities of the superior sovereign should apply to these bank taxes,—and picking up all of the pertinent Acts of the Congress, as we would a deed, "by the four corners", and looking them over together, we find:

(1) That the Congress has expressed its plain intent that the National Bank Act should not be in force in the Philippine Islands; and, therefore, that its taxing Section 41, now R. S. 5219, should not apply there; that neither the National Bank Act nor the Federal Reserve Act has been extended to those Islands;

(2) That, in the Philippines, the Congress has established or authorized systems of laws that are different in many ways from those in force in the Territories and in the other insular possessions and in the States,—a different monetary system, different tariff laws, different immigration laws, different customs laws, a different judicial system;—and in particular, with relation to the matter here immediately at hand, that it has authorized the Philippine government to guarantee the income of the Agricultural Bank,—a kind of national bank for the Philippine Islands, now merged in the government owned Philippine

National Bank, a bank which throughout its history has been very truly and really a government institution of the Philippine Islands,—practically a branch of the insular government;

(3) That the Congress has given full legislative and taxing powers to the Philippine Legislature, unrestricted by any kind of express limitation with reference to imposing taxes on banks or on other property, *except* by the limitation in Section 2 of the Organic Act, "That the rule of taxation in said islands shall be uniform";

(4) That by Section 6 of the present Organic Act,[18] enacted August 29, 1916, the Congress enacted that "**the laws now in force in the Philippines shall continue in force and effect,** except as altered, amended, or modified herein", without making any modification or alteration or limitation whatever as to the power of the Philippine Legislature in relation to the taxation of banks; and, further, that the Congress must be conclusively presumed to have been aware, when it enacted that Section 6 of the Organic Act, that among the laws then in force in the Philippine Islands, which it was thus ratifying, were Sections 1654 and 1657 of the Administrative Code of February 24, 1916, Act No. 2657 of the Philippine Legislature,[19] which contained the same provisions afterwards carried forward by Philippine Act No. 2711, March 10, 1917, into Sections 1499 and 1502 of the present Administrative Code of the Islands, under which the taxes here involved were levied;[20] and also Act 2612, Appendix III, *infra*, pp. 67-72, enacted February 4, 1916, creating the Philippine National Bank and merging (Sec. 6, pp. 67-68 *infra*) the Government Agricultural Bank into it;

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[18] *Ante*, p. 4.

[19] Appendix I, *infra*, pp. 59-61.

[20] *Ante*, pp. 6-7. The present Administrative Code was enacted as an amendment to the former Administrative Code of 1916 in force when the present Organic Act for

(5) That by Section 19 of the Organic Act, the Congress directed (39 Stat. at p. 551; *ante*, pp. 5-6):

> "All laws enacted by the Philippine Legislature shall be reported to the Congress of the United States, which hereby reserves the power and authority to annul the same";

and that although the present Administrative Code of the Philippine Islands, including those Sections 1499 and 1502, reenacting as above pointed out Sections 1654 and 1657 of the former Administrative Code, was itself enacted by the Philippine Legislature on March 10, 1917, only six months after the Organic Act was passed, and was expressly enacted, as is recited in its enacting clause, "for the purpose of adapting it to the Jones Law", the Organic Act, nevertheless the Congress has never seen fit to annul either of these sections or any of the kindred sections of the Administrative Code relating to the taxation of banks;

(6) That the Congress must be presumed to have been aware that, so long as it refrained from extending the taxing section of the National Bank Act to the Philippine Islands, the result was that, *unless* it was its intention and it was to be understood as leaving the Philippine Legislature unhampered to exercise its taxing powers uniformly as to all banks in the Islands including any branches of national banks established there, it would necessarily follow that the Philippine Legislature could not impose any taxes of any kind whatever upon such Philippine branches of United States national banks (if they could validly be established there at all), either income taxes or real estate

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the Islands was passed by the Congress. The enacting clause of the present Administrative Code reads:

> "For the purpose of adapting it to the Jones Law and the Reorganization Act, Act No. 2657, known as The Administrative Code, is hereby amended in certain particulars; and said Act shall hereafter read as follows:" (*Ante*, p. 6).

taxes or any other taxes of any kind; since, in the absence of the direction contained in the taxing section of the National Bank Act, there is no provision anywhere in the federal statutes authorizing the Philippine Legislature to levy one kind of taxes, but not another kind, upon branches of national banks established in the Islands, and such branches must either be wholly tax-free or else wholly subject to the taxing power given the Legislature by the Organic Act; and

(7) That if such national bank branches were to be construed to have such complete tax exemption in the Islands, it would give them such a business advantage as practically to yield them a monopoly of the banking business in the Islands and would also necessarily

(8) Very greatly hamper the business, and greatly injure the income, of the Philippine National Bank, the government owned successor of the Agricultural Bank of the Islands, the income of which the Congress had expressly authorized the Philippine government to guarantee, which is practically an arm of the Philippine government; and

(9) That, as to banks in the Islands, it *would utterly destroy the uniformity of taxation which the Congress had expressly enjoined* by the clause in Section 2 of the Organic Act for the Philippines above quoted, "That the rule of taxation in said Islands shall be uniform".

**THOSE ARE THE THINGS WHICH WE FIND WHEN WE PICK UP THE PERTINENT LEGISLATION OF THE CONGRESS "BY THE FOUR CORNERS" AND EXAMINE IT.** There is one further consideration to be borne in mind, viz.:

(10) That, after all, the usual *presumption* that the Congress does not intend that an agency or an instrumentality of the United States may be taxed by the subordinate government of a Territory, or of an insular possession, *applies with but limited force in the case of a bank,*

*which is primarily a corporation for profit, and is only secondarily or in a limited sense, an agency of the Federal government in some of its fiscal operations.* As this court said in *Talbott* v. *Silver Bow County, supra,* 139 U. S. 438, 445-446;

> "A bank is an institution organized for private business, and with a view to individual profit, although it may serve a public purpose and such public purpose justify its creation."

**Now, taking all those things into consideration, what was the real Congressional intent?** Are we blindly to follow a presumption against its being intended that a subordinate sovereignty shall tax the superior sovereign, or its instrumentalities of any kind? Or, under these circumstances, does that presumption accord with what appears to have been the real intent of the Congress? Plainly it does not. The whole course of the Congressional legislation here involved rebuts that presumption as applied to these taxes levied by authority of the Philippine Legislature upon these banks by virtue of the general legislative and taxing powers with which the Congress has endowed that Legislature. The contrary conclusion would lead to results which the Congress cannot have intended.

If the Congress had intended to limit the taxing powers of the insular Legislature with respect to any bank established in the Islands,—whether branches of national banks or others, it would have done so in express terms, either by expressly extending the National Bank Act with its taxing section to those Islands, as it has specifically extended various other Acts to the Islands when it desired them to become effective there; or else it would have enacted some other positive legislation definitely limiting and defining the insular taxing powers with respect to these banks in the Islands. *It cannot have intended to leave them wholly tax-free,* as is the necessary result as the statute now stands, unless they are subject to the general taxing powers of the

Philippine Legislature. Nor is it to be presumed that the Congress intended, by mere implication, so widely to depart from the rule of uniformity in taxation in the Islands which it had itself expressly prescribed in Section 2 of the Organic Act; nor so seriously to injure the established Philippine National Bank almost wholly owned by the insular government, the successor to the Agricultural Bank which the Congress itself had manifestly intended to foster as a local national fiscal institution for the Islands by the provision of the Act of March 4, 1907, c. 2908, 34 Stat. 1282, *supra*, quoted *infra*, pp. 50-51, authorizing the insular government to guarantee its income.[21]

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[21] The Philippine National Bank, the government fiscal institution of the Islands, is practically all owned by the Philippine government, and almost a part of that government. This court summarized its organization and ownership in *Springer and Agoncillo* v. *Philippine Islands*, 277 U. S. 189, 198, as follows:

> "The National Bank was created by Act 2612, approved February 4, 1916, subsequently amended by Act 2747, approved Feb. ary 20, 1918, and Act 2938, approved January 30, 1921. The authorized capital of the bank, as finally fixed, was 10,000,000 pesos, consisting of 100,000 shares, of which, in pursuance of the legislative provisions, the Philippine Government acquired and owns 97,332 shares, the remainder being held by private persons. By the original act the voting power of the government-owned stock was vested exclusively in the Governor-General, but by the amended acts now in force that power was 'vested exclusively in a board, the short title of which shall be "Board of Control", composed of the Governor-General, the President of the Senate, the Speaker of the House of Representatives.' The Governor-General was also divested of the power of appointment of the President and Vice-President of the bank, originally vested in him, and their election was authorized to be made by the directors from among their own number." (*Pertinent parts of the Acts are in Appendix III, infra*, pp. 67-74.)

And these conclusions gain redoubled force when it is borne in mind that the Congress has not even expressly extended the provisions in the Federal Reserve Act,—particularly has not extended those of Section 25 of that Act,—to the Islands; and, therefore, has never, at least expressly, authorized the establishment in those Islands of branches of United States national banks at all. (See Point V, *infra*, pp. 43-44).

## POINT IV

**The Congress, by Section 6 of the present Organic Act for the Philippines expressly ratified the sections of the Philippine Administrative Code under which the taxes here involved were imposd.**

As already noted (*supra*, pp. 36-38) the sections of the present Administrative Code of the Philippine Islands under which the taxes here in question,—"capital taxes" and "deposits taxes",—were levied, are almost literal re-enactments of the corresponding sections of the former Philippine Administrative Code of 1916 which was in force in the Islands on August 29, 1916, when the Organic Act was enacted. The sections of the present Administrative Code, Act No. 2711, approved March 10, 1917, under which these taxes were levied, are Sections 1499 and 1502. The corresponding sections of the former Administrative Code of 1916, Act No. 2657, effective July 1, 1916, were Sections 1654 and 1657. The sections of the present Administrative Code are printed above (*ante*, pp. 6-7), and the corresponding sections of the former Administrative Code of 1916 are on pp. 59-61 of Appendix I. **The Administrative Code of 1916 had been enacted by the Philippine Legislature on February 24, 1916, and had gone into effect in the Islands on July 1, 1916, only one month and twenty-nine days before the Congress enacted the "Jones Law" the (then) new Organic Act for the Philippines.**

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This court there held that the Governor General could not be supplanted by the legislative power in the exercise of the executive power of control of that National Bank

Necessarily such an important Act as the then so recently adopted Administrative Code of the Islands of 1916 was in the minds of the members of the Congressional committee framing the new Organic Act; and, as it must be conclusively presumed, was in the minds of the Congress when they enacted Section 6 of the new Organic Act on August 29, 1916, expressly providing (39 Stat. at p. 547; *ante*, p. 4):

> "That the laws now in force in the Philippines shall continue in force and effect, except as altered, amended, or modified herein, until altered, amended, or repealed by the legislative authority herein provided or by Act of Congress of the United States",

without making any exception or limitation whatever as to those Sections 1654 and 1657 of the Administrative Code of 1916 which was then in force in the Islands. This was, therefore, an express provision by the Congress that these sections of the Administrative Code as they then stood should "continue in force and effect" in the Islands until changed by the legislative authority "herein provided",—the Philippine Legislature,—or by Act of Congress. Those sections were carried forward without any substantial change whatever into the present Administrative Code, still in force. They are, in effect, Acts of the Congress itself.[21]

## POINT V

**There is no Federal statute authorizing the establishment of branches of United States national banks in the Philippine Islands.**

As above pointed out in Point I hereof, Section 25[22] of the Federal Reserve Act authorizing the Federal Reserve Board to permit establishment of branches of national banks in foreign countries and in "dependencies or insular possessions" of the United States does not expressly mention the Philippine Islands, and has never been ex-

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[22] As amended by the Acts of September 7, 1916 and September 17, 1919; Appendix I, *infra*, pp. 56-57.

pressly extended to those Islands; and, therefore, is not in force there, any more than is the taxing section of the National Bank Act, or any other part of the National Bank Act, or any other statute of the United States not specifically mentioning those Islands and not specifically extended thereto by any Act of Congress.

It seems necessarily to follow that the attempted license from the Federal Reserve Board to the National City Bank to establish branches in Manila and Cebu in the Islands which was offered in evidence by the bank in this case (R. 42-43), **is wholly void, of no effect whatever, and gives no authority for the establishment or existence of those branches in the Philippine Islands.** Whatever else those so-called "branches" of the National City Bank in the Philippine Islands may really be,—if there is any legal authority whatever for their existence at all,—**they are not really branches of the National City Bank of New York under Section 25 of the Federal Reserve Act or any other act of the United States.** They owe their existence in the Philippine Islands, and their continued tolerance there, wholly to Philippine law. Whether they are to be looked upon as foreign banks within the Islands, or as *de facto* domestic banks of the Islands existing and carrying on business there under Philippine law,—in any event they are not, in any proper sense, "branches" of a national bank of the United States existing under any license from the Federal Reserve Board; since the Board has no power,—and never has had any power,—to license a branch bank in the Philippine Islands. The only power of the Board to license a branch of a national bank to be established outside of the continental United States,—or for any such branch to be organized or to exist or to carry on business under any law of the United States,—is Section 25 of the Federal Reserve Act as amended; which does not authorize such a branch in the Philippine Islands, because the Act does not expressly mention those Islands, and it has never been extended there.

As above pointed out, it does not appear that the Federal Reserve Board ever licensed any branches of national banks to be established in the Philippine Islands during all of the years from the enactment of the Federal Reserve Act until this license was granted in 1930 for these Manila and Cebu branches of this respondent, the National City Bank of New York.

## CONCLUSION

There is no federal limitation whatever preventing the Philippine government from levying the taxes here in question upon these so-called Philippine "branches" of the National City Bank of New York; the taxes are valid; the judgments of the Supreme Court of the Philippine Islands and of the Court of First Instance of Manila are wrong; the writ of certiorari should issue; and the judgments of the Supreme Court of the Philippine Islands and of the Court of First Instance should be reversed and the case remanded with directions to dismiss the action at the plaintiff bank's costs.

Respectfully submitted,

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## APPENDIX I

### OTHER STATUTES

FEDERAL:

(1) The first Organic Act for the Islands, the "Foraker Act", also provided (Secs. 76, 77 and 79, Act of July 1, 1902, *supra,* 39 Stat. at p. 710; 48 U. S. Code, 1141-1146):

> "Sec. 76. That the government of the Philippine Islands is hereby authorized to establish a mint at the City of Manila, in said Islands, for coinage purposes, and the coins hereinafter authorized may be coined at said mint. And the said government is hereby authorized to enact laws necessary for such establishment: *Provided,* That the laws of the United States relating to mints and coinage, so far as applicable, are hereby extended to the coinage of said Islands.
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> "Sec. 77.[23] That the government of the Philippine Islands is authorized to coin for use in said Islands a coin the denomination of 50 centavos * * *, a coin of the denomination of 20 centavos * * *, and a coin of the denomination of 10 centavos * * *; and the standard of said silver coins shall be such that of one thousand parts, by weight, nine hundred shall be * * *.
>
> "Sec. 79. That the government of the Philippine Islands is also authorized to issue minor coins of the denominations of * * *."

(2) By the Act of March 2, 1903, c. 980, 32 Stat. 952, "An Act To establish a standard of value and to provide for a coinage system in the Philippine Islands", the Congress established an entirely separate system of coinage and currency for the Islands. Pertinent provisions are:

> (Section 1) "That the unit of value in the Philippine Islands shall be the gold peso consisting of * * * shall be legal tender for all debts, public and private, in the Philippine Islands."
>
> "Sec. 2. That in addition to the coinage author-

[23] As amended by Sec. 4 of the Act of Congress of March 2, 1903, c. 980, Secs. 4, 32 Stat. 952, 953.

ized for use in the Philippine Islands by the Act of July 1, 1902" (the "Foraker Act", first Organic Act for the islands, *supra*) "the government of the Philippine Islands is authorized to coin to an amount not exceeding seventy-five million pesos for use in said islands, a silver coin of the denomination of one peso and of the weight * * *.

"Sec. 3. That the silver peso authorized by this Act shall be legal tender in the Philippine Islands * * *."

"Sec. 8." (as amended by Sec. 2, Act of February 6, 1905, and by Act of June 23, 1906). "That the Treasurer of the Philippine Islands is hereby authorized, in his discretion, to receive in the Treasury of the government of the said islands of any of its branches deposits of the standard silver coins of one peso authorized by this Act to be coined, in sums of not less than twenty pesos, Philippine currency, and to issue certificates therefor in denominations of * * *. Such certificates shall be receivable for customs, taxes, and for all public dues in the Philippine Islands * * *, and when held by any banking association in said islands may be counted as a part of its lawful reserve * * *: *Provided further,* that the amount of gold coin held in such reserve shall not at any time exceed sixty per centum of the total amount of certificates outstanding."

(3) By the Act of February 9, 1903, c. 529, 32 Stat. 806, it was provided:

"That the provisions of Section 1014 of the Revised Statutes, so far as applicable shall apply throughout the United States for the arrest and removal therefrom to the Philippine Islands of any fugitive from justice charged with the commission of any crime or offense against the United States within the Philippine Islands, and shall apply within the Philippine Islands for the arrest and removal therefrom to the United States any fugitive from justice charged with the commission of any crime or offense against the United States. Such fugitive may, by any judge or

magistrate of the Philippine Islands, * * * be arrested and * * *."

"Sec. 2. That the provisions of Sections 5278 and 5279 of the Revised Statutes, so far as applicable, shall apply to the Philippine Islands, which, for the purposes of said sections, shall be deemed a Territory within the meaning thereof."

(4) By the Act of February 6, 1905, c. 454, 33 Stat. 698, entitled "*An Act to Extend Certain Provisions of the Revised Statutes of the United States to the Philippine Islands*", it was provided:

"That the provisions of Sections 5270, 5271, 5272, 5273, 5274, 5275, 5276, and 5277 of the Revised Statutes (as amended by the Act approved August 3, 1882), so far as applicable shall apply to the Philippine Islands for the arrest and removal therefrom of any fugitives from justice charged with the commission within the jurisdiction of any foreign government of any of the crimes provided for by treaty between the United States and such foreign nations, and for the delivery by a foreign government of any person accused of a crime committed within the jurisdiction of the Philippine Islands."

"Sec. 2. That the provisions of Sections 5409 and 5410 of the Revised Statutes are hereby made applicable to proceedings in extradition from the Philippine Islands, either to the United States * * *, or to foreign countries under the provisions of this Act."

(5) By the Act of January 18, 1907, c. 153, 34 Stat. 850, the Congress directed:

"That the Superintendent of Documents is hereby authorized and directed to supply one copy of each document delivered to him for distribution to State and Territorial libraries and designated depositories to the Library of the Philippine government, * * *."

(6) By the Act of March 4, 1907, "An Act to provide for the establishment of an agricultural bank in the Philippine Islands", c. 2908, 34 Stat. 1282, the Congress provided:

> "That for the purpose of aiding in the establishment and operation of such an agricultural bank in the Philippine Islands as the general government thereof may hereafter specifically authorize the Philippine government is empowered to guarantee an income of not exceeding four per centum per annum upon cash capital actually invested by individuals or corporations in such agricultural bank; such guarantee shall be granted by an Act of the Philippine Commission which shall contain, among others, the following provisions:
>
> "First. The guaranty shall be made to a company organized under the laws of the Philippine Islands, with its principal office in Manila and with branches in such parts of the islands as may be designated by the Philippine Commission.
>
> "Second. The bank shall not grant loans except to those engaged in agricultural * * *.
>
> "Third. No loan exceeding in amount five thousand dollars shall be made except upon the written authorization of the Secretary of Finance and Justice of the Philippine Islands.
>
> "Fourth. Interest charge on loans shall not exceed ten per centum per annum: * * *
>
> "For the further security of the Philippine Government said government shall provide by the aforesaid Act proper rules, including those for determining the actual cash capital invested in such banks and the net income * * *."

(7) By the Act of April 29, 1908, c. 152, 35 Stat. 70, it was provided:

> "That until Congress shall have authorized the reg-

istry as vessels of the United States of vessels owned in the Philippine Islands, the government of the Philippine Islands is hereby authorized to adopt, from time to time, and enforce regulations governing the transportation of merchandise and passengers between ports or places on the Philippine Archipelago.

"Sec. 2. That on and after the passage of this Act the same tonnage taxes shall be levied, collected, and paid upon all foreign vessels coming into the United States from the Philippine Islands which are required by law to be levied, collected, and paid upon vessels coming into the United States from foreign countries.

"Sec. 3. That the provisions of law restricting to vessels of the United States the transportation of passengers and merchandise directly or indirectly from one port of the United States to another port of the United States shall not be applicable to foreign vessels engaging in trade between the Philippine Islands and the United States."

(8) By the Act of August 5, 1909, entitled "An Act to Raise Revenue for the Philippine Islands, and for other purposes", c. 8, 36 Stat. 130, the congress enacted an entirely separate tariff law. The first section provides:

"That on and after sixty days following the passage of this Act, except as otherwise specifically provided in this Act, there shall be levied, collected, and paid, upon all articles, goods, wares, or merchandise of every kind and class entering the jurisdiction of the Philippine Islands, from any place or places, including the United States and its possessions, and in any manner whatsoever, either with intent to unlade therein, or which, after such entering, are consumed therein, or become incorporated into the general mass of property within said islands, the rates of import duty which are by this Act specifically provided."

Section 12 of that Act provides (36 Stat. at page . ):

"Sec. 12. That all articles, except rice, the growth,

product, or manufacture of the United States and its possessions to which the customs tariff in force in the United States is applied and upon which no drawback of customs duties has been allowed therein going to the Philippine Islands shall hereafter be admitted therein free of customs duty when the same are shipped directly from the country of origin to the country of destination: *Provided,* That direct shipments shall include shipment in bond to foreign territory ambiguous to the United States.

(9) It was also provided by the former Organic Act for the Philippine Islands, the "Foraker Act", *supra,* Act of July 1, 1902, c. 1369, Sec. 11, 32 Stat. 691, p. 695:

"Sec. 11. That the government of the Philippine Islands is hereby authorized to provide for the needs of commerce by improving the harbors and navigable waters of said islands and to construct and maintain in said navigable waters and upon the shore adjacent thereto bonded warehouses, wharves, piers, lighthouses, signal and life-saving stations, buoys, and like instruments of commerce, and to adopt and to enforce regulations in regard thereto, including bonded warehouses wherein articles not intended to be imported into said islands nor mingled with the property therein, but brought into a port of said islands for reshipment to another country, may be deposited in bond and reshipped to another country without the payment of customs duties or charges."

(10) It was further provided by Section 84 of the same "Foraker Act", of July 1, 1902 (32 Stat. at p. 711):

"Sec. 84. That the laws relating to entry, clearance, and the manifests of steamships and other vessels arriving from or going to foreign ports shall apply to the voyages each way between the Philippine Islands and the United States and the possessions thereof and all laws relating to the collection and protection of customs duties not inconsistent with the Act

of Congress of March 8, 1902, 'Temporarily to Provide Revenue for the Philippine Islands', shall apply in the case of vessels and goods arriving from said islands in the United States and its aforesaid possessions."

The laws relating to seamen on foreign voyages shall apply to seamen on vessels going from the United States and its possessions aforesaid to said islands, * * *.

The provisions of chapters 6 and 7, Title 48, Revised Statutes, so far as now in force, and any amendments thereof, shall apply to vessels making voyages either way between ports of the United States or its aforesaid possessions and ports in the Islands; and the provisions of law relating to public health and quarantine shall apply in the case of all vessels entering a port of the United States or its aforesaid possessions from said islands, * * *."

(11) Section 1891 of the Revised Statutes (48 U. S. Code, Supp., 1490) provides:

The Constitution and all laws of the United States which are not locally inapplicable shall have the same force and effect within all the organized Territories, and in every Territory hereafter organized as elsewhere within the United States.

(12) Section 6 of the National Bank Act of June 3, 1864, c. 106, 13 Stat. 99, 101, carried forward without change in this respect into Section 5134 of the Revised Statutes (12 U. S. Code, 22) provides in pertinent part:

That the persons uniting to form such an association shall, under their hands, make an organization certificate, which shall specify—

First. The name * * *.

Second. The place where its operations of discount and deposit are to be carried on, *designating the state,*

*territory, or district,* and also the particular county and city, town, or village.

Third. The amount of its capital stock, and the number of shares * * *.

Fourth. The names and places of residence of the shareholders, and the number of shares held by each of them.

Fifth. A declaration that said certificate is made to enable such persons to avail themselves of the advantages of this act. (*Italics supplied.*)

(13) The last three provisos of Section 41 of the Act of June 3, 1864, *supra,* 13 Stat. at p. 112, as reenacted in Section 5219 of the Revised Statutes, provided:

Nothing herein shall prevent all the shares in any association from being included in the valuation of the personal property of the owner or holder of such shares, in assessing taxes imposed by authority of the State within which the association is located; but the legislature of each State may determine and direct the manner and place of taxing all the shares of national banking associations located within the State, subject only to the two restrictions, that the taxation shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State, and that the shares of any national banking association owned by non-residents of any State shall be taxed in the city or town where the bank is located, and not elsewhere. Nothing herein shall be construed to exempt the real property of associations from either State, county, or municipal taxes, to the same extent, according to its value, as other real property is taxed.

(14) By Acts of March 4, 1923, c. 267, 42 Stat. 1499, and March 25, 1926, c. 88, 44 Stat. 223, the foregoing Section 5219 of the Revised Statutes was amended so as to read as now (12 U. S. Code, Supp., 548; *italics supplied*):

Sec. 5219. The legislature of each State may determine and direct, subject to the provisions of this section, the manner and place of taxing all the shares of national banking associations *located within its limits.* The several States may (1) tax said shares, or (2) include dividends derived therefrom in the taxable income of an owner or holder thereof, or (3) tax such associations on their net income, or (4) according to or measured by their net income, provided the following conditions are complied with:

1. (a) The imposition by any State of any one of the above four forms of taxation shall be in lieu of the others, except as hereinafter provided in subsection (c) of this clause.

(b) In the case of a tax on said shares the tax imposed shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State. * * *

(c) In case of a tax on or according to or measured by the net income of an association, the taxing State may, except in case of a tax on net income, include the entire net income received from all sources, but the rate shall not be higher than the rate assessed upon other financial corporations nor higher than the highest of the rates assessed by the taxing State upon mercantile, manufacturing, and business corporations doing business within its limits. * * *

(15) Meantime by Section 25 of the Federal Reserve Act of December 23, 1913, c. 6, 38 Stat. 251, 273, the Congress had provided:

Sec. 25. Any national banking association possessing a capital and surplus of $1,000,000 or more may file application with the Federal Reserve Board, upon such conditions and under such regulations as may be prescribed by the said board, for the purpose of securing authority to establish branches **in foreign countries or dependencies of the United States** for the furtherance of the foreign commerce of the United States, and to act, if required to do so, as fiscal agents of the United

States. Such application shall specify, in addition to the name and capital of the banking association filing it, the place or places where the banking operations proposed are to be carried on, and the amount of capital set aside for the conduct of its foreign business. The Federal Reserve Board shall have power to approve or to reject such application if, in its judgment, the amount of capital proposed to be set aside for the conduct of foreign business is inadequate, or if for other reasons the granting of such application is deemed inexpedient.

Every national banking association which shall receive authority to establish foreign branches shall be required at all times to furnish information concerning the condition of such branches to the Comptroller of the Currency upon demand, and the Federal Reserve Board may order special examinations of the said foreign branches at such time or times as it may deem best. Every such national banking association shall conduct the accounts of each foreign branch independently of the accounts of other foreign branches established by it and its home office, and shall at the end of each fiscal period transfer to its general ledger the profit or loss accruing at each branch as a separate item.

(16) By the Amendatory Act of September 7, 1916, c. 461, 39 Stat. 752, 755, the foregoing Section 25 was amended by inserting the words "or insular possessions" after the word "dependencies"; and by Section 2 of the Act of September 17, 1919, c. 60, 41 Stat. 285, 286 (12 U. S. Code, 601), the first two sentences were recast so as to read as follows (with further amendments not here pertinent):

Sec. 25. Any national banking association possessing a capital and surplus of $1,000,000 or more may file application with the Federal Reserve Board for permission to exercise, upon such conditions and under such regulations as may be prescribed by the said board, either or both of the following powers:

First. To establish branches in foreign countries

or dependencies or insular possessions of the United States, and to act if required to do so as fiscal agents of the United States.

Second. To invest an amount not exceeding in the aggregate ten per centum of its paid-in capital stock and surplus in the stock of one or more banks or corporations chartered or incorporated under the laws of the United States or of any State thereof, and principally engaged in international or foreign banking, or banking in a dependency or insular possession of the United States either directly or through the agency, ownership, or control of local institutions in foreign countries, or in such dependencies or insular possessions.

Such application shall specify the name and capital of the banking association filing it, the powers applied for, and the place or places where the banking operations proposed are to be carried on. The Federal Reserve Board shall have power to approve or to reject such application in whole or in part if for any reason the granting of such application is deemed inexpedient, and shall also have power from time to time to increase or decrease the number of places where such banking operations may be carried on.

(17) Section 7 of the Internal Revenue Act of March 3, 1865, c. 78, 13 Stat. 469, 484, as carried into Section 5155 of the Revised Statutes, provided:

Sec. 5155. It shall be lawful for any bank or banking association organized under State laws, and having branches, the capital being joint and assigned to and used by the mother-bank and branches in definite proportions, to become a national banking association in conformity with existing laws, and to retain and keep in operation its branches, or such one or more of them as it may elect to retain; the amount of the circulation redeemable at the mother-bank, and each branch, to be regulated by the amount of capital assigned to and used by each.

It was amended by Section 7 of the Act of February 25,

1927, amending the banking laws, c. 191, 44 Stat. 1224, 1228, and further amended by Section 23 of the banking act of 1933 (Act of June 16, 1933, c. 89, 48 Stat. 162, 189-190), so as to read:

Sec. 5155. The conditions upon which a national banking association may retain or establish and operate a branch or branches are the following:

(a) A national banking association may retain and operate such branch or branches as it may have in lawful operation at the date of the approval of this Act, and any national banking association which has continuously maintained and operated not more than one branch for a period of more than twenty-five years immediately preceding the approval of this Act may continue to maintain and operate such branch.

(b) If a State bank is hereafter converted into or consolidated with a national banking association, or if two or more national banking associations are consolidated, such converted or consolidated associations may, with respect to any of such banks, retain and operate any of their branches which may have been in lawful operation by any bank at the date of the approval of the Act.

(c) A national banking association may, with the approval of the Comptroller of the Currency, establish and operate new branches: (1) Within the limits of the city, town or village in which said association is situated, if such establishment and operation are at the time expressly authorized to State banks by the law of the State in question; and (2) at any point within the State in which said association is situated, if such establishment and operation are at the time authorized to State banks by the statute law of the State in question by language specifically granting such authority affirmatively and not merely by implication or recognition, and subject to the restrictions as to location imposed by the law of the State on State banks. No such association shall establish a branch outside of the city, town or village in which it is situated unless it has a

paid-in and unimpaired capital stock of not less than $500,000: *Provided,* That in States with a population of less than one million, and which have no cities located therein with a population exceeding one hundred thousand, the capital shall be not less than one-half million, and which have no cities located therein with a population exceeding fifty thousand, the capital shall not be less than $100,000.

(d) The aggregate capital of every national banking association and its branches shall at no time be less than the aggregate minimum capital required by law for the establishment of an equal number of national banking associations situated in the various places where such association and its branches are situated.

(e) No branch of any national banking association shall be established or moved from one location to another without first obtaining the consent and approval of the Comptroller of the Currency.

(f) The term "branch" as used in this section shall be held to include any branch bank, branch office, branch agency, additional office, or any branch place of business located in any State or Territory of the United States or in the District of Columbia at which deposits are received, or checks paid, or money lent.

**(g) This section shall not be construed to amend or repeal section 25 of the Federal Reserve Act, as amended, authorizing the establishment by national banking associations of branches in foreign countries, or dependencies, or insular possessions of the United States.**

(h) The words "State bank", "State banks", "bank", or "banks", as used in this section, shall be held to include trust companies, savings banks, or other such corporations or institutions carrying on the banking business under the authority of State laws.

(18) Sections 1654 and 1657 **of the former Philippine Administrative Code of 1916 provided:**

"Sec. 1654. Tax on capital, deposits, and circulation of banks.—Subject to the exemptions herein made there

shall be collected from banks the following taxes on capital, deposits, and circulation:

"(a) Upon the capital employed by the bank, for each month, one twenty-fourth of one per centum.

"(b) Upon the average amount of deposits of money, subject to payment by check or draft, or represented by certificates of deposit, or otherwise, whether payable on demand or at some future day, for each month, one-eighteenth of one per centum.

"(c) Upon the average amount of circulation issued by the bank, including as circulation all notes and other obligations calculated or intended to circulate or be used as money, but not including such as may be retained in the vault of the bank or redeemed and on deposit for said bank, for each month, one-twelfth of one per centum.

"(d) Upon the average amount of such circulation issued as above, being beyond the amount of the paid-in capital of the bank, for each month, and as an additional tax, one per centum.

" 'Bank' as herein used, includes every incorporated or other bank, and every person, association, or company having a place of business where credits are opened by the deposit or collection of money or currency subject to be paid or remitted upon draft, check, or order, or where money is advanced or loaned on stock, bonds, bullion, bills of exchange, or promissory notes are received for discount or for sale.

" 'Capital employed' does not include money borrowed or received from time to time in the usual course of business from any person not a partner of or interested in such a bank; and no tax shall be imposed on the capital employed by any person whose sole business is lending money on real-estate security."

"Sec. 1657. Computing resources of bank incorporated abroad.—The amount of capital used by a bank within the Philippine Islands, when such bank is a branch of a bank incorporated under laws of the United States or a foreign country, shall, for the pur-

poses of assessment hereunder, be determined in the following manner: The total amount of the capital of the bank shall be ascertained, and, likewise, the total amount of the net earnings of the bank accruing during the preceding six months, and also the total amount of the net earnings accruing from the bank's business conducted in the Philippine Islands; and such a proportion of the total capital of the bank shall be deemed to have been employed in the Philippine Islands as the net earnings in the Philippine Islands bear to the total net earnings of the bank.

## APPENDIX II

**Resume of Territorial Organic Acts before the Spanish War, in relation to extending statutory laws of the United States to the Territories.**

(1) In the earlier Organic Acts for the Territories, the Congress did not extend the statutory laws of the United States generally to the Territory; but, instead, extended only such Acts as were particularly named in the Organic Act. Thus:

The Organic Act for the Territory of Orleans and District of Louisiana, Act of March 26, 1804, c. 38, 2 Stat. 283, 285, provided, with reference to the Territory of Orleans thereby created:

"Sec. 7. That the following Acts, that is to say:

"An Act for the punishment of certain crimes against the United States.

"An Act, in addition to an Act for the punishment of certain crimes against the United States.

"An Act to prevent citizens of the United States from privateering ****.

"An Act for the punishment ****.

"An Act respecting fugitives from justice, ****.

"An Act prohibiting the carrying on of the slave trade ****.

"An Act to prevent the importation of certain persons ****.

"An Act to establish the post office of the United States.

"An Act ****.

"An Act ****.

"An Act making provision relative to rations for Indians, *****, *shall extend to, and have full force and effect in the above mentioned Territories.*" (*Italics supplied*).[1]

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[1] The very first Territorial Organic Act after the adoption of the Constitution was the Act of August 7, 1789, c.

(2) The Organic Act for the Territory of Florida, Act of March 30, 1822, c. 13, 3 Stat. 654, contained a similar enumeration, but *with a general provision added.* It provided:

Sec. 9. That the following Acts, that is to say:

"An Act for the punishment of certain crimes ****.

"An Act to provide for the punishment ****.

"An Act in addition to the Act ****.

"An Act for the punishment ****.

"An Act respecting fugitives from justice ****.

"An Act to prohibit the carrying on of the slave trade ****.

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8, 1 Stat. 50, for the government of the territory northwest of the River Ohio, enacted merely in order to continue in force the Ordinance of 1787, and to adapt it to the Constitution. That Act contained no express provisions relative to the force of the statutory laws of the United States in the Territory.

The next Act, that of May 26th, 1790, c. 14, 1 Stat. 123, erecting the territory south of the Ohio River, merely provided:

"And the government of the said territory south of the Ohio shall be similar to that which is now exercised in the territory northwest of the Ohio";

and a similar simple provision was made in Section 6 of the next following Act, that for Mississippi Territory, Act of April 7, 1798, c. 28, 1 Stat. 549, 550. The Territories of Indiana, Michigan, Illinois, Missouri, Alabama and Arkansas, being formed by the division of previously existing Territories, the Congress contented itself with continuing in force in those Territories respectively the laws theretofore in force in the parent Territories, without any express provision as to the extension thereto of the statutory laws of the United States. (INDIANA, Act of May 7, 1800, 2 Stat. 58; MICHIGAN, Act of January 11, 1805, 2 Stat. 309; ILLINOIS, Act of February 3, 1809, 2 Stat. 514; MISSOURI, Act of June 4, 1812, 2 Stat. 743; ALABAMA, Act of March 3, 1817, 3 Stat. 371; ARKANSAS, Act of March 2, 1819, 3 Stat. 493).

"An Act in addition to the Act ****.

"An Act to prevent settlements being made on lands ceded ****.

"An Act ****.

"An Act ****.

"An Act ****.

"An Act ****.

"And the laws of the United States relating to the revenue and its collection, subject to the modifications stipulated by the 15th Article of the Treaty ****; *and all other public laws of the United States, which are not repugnant to the provisions of this Act, shall extend to, and have full force and effect in, the Territory aforesaid*".

(3) In the Organic Act for Wisconsin the Congress entirely omitted any enumeration of the particular statutory laws of the United States to be extended to the Territory, and declared broadly (Act of April 20, 1836, c. 54, Sec. 12, 5 Stat. 10, 15):

"Sec. 12. That the inhabitants of the Territory shall be entitled to, and enjoy, all and singular the rights, privileges, and advantages, granted and secured to the people of the Territory of the United States northwest of the River Ohio ****; *and further, the laws of the United States are hereby extended over, and shall be in force in, said Territory, so far as the same, or any provisions thereof may be applicable.*" (*Italics supplied*).

Substantially the same provision was repeated in the Organic Act for the Territory of Iowa, Act of June 12, 1838, c. 96, Sec. 12, 5 Stat. 235, 239; in the Organic Act for the Territory of Oregon, Act of August 14, 1848, c. 177, Sec. 14, 9 Stat. 323, 329; and in that for Minnesota, Act of March 3, 1849, c. 121, Sec. 12, 9 Stat. 403, 407,—in each case without any specific enumeration of any particular federal statutes to be extended to the Territory.

(4) In the Organic Act for the Territory of New Mexico, the first Territory to be organized on the lands acquired by the Mexican War (Act of September 9, 1850, c. 49, Sec. 17, 9 Stat. 446, 452), the Congress went one step further, expressly extending "the Constitution" as well as "all laws of the United States which are not locally inapplicable" to the Territory, — the provision reading:

> "Sec. 17. That the Constitution, and all laws of the United States which are not locally inapplicable shall have the same force and effect within the said territory of New Mexico as elsewhere within the United States."

That provision was repeated in the Organic Act for the Territory of UTAH, Act of September 9, 1850, c. 51, Sec. 17, 9 Stat. 453, 458;[2] in that for COLORADO, Act of February 28, 1861, c. 59, Sec. 16, 12 Stat. 172, 176;[3] in that for NEVADA, Act of March 2, 1861, c. 133, Sec. 16, 12 Stat. 209, 214; for DAKOTA, Act of March 2, 1861, c. 136, Sec.

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[2] The Territory of Washington being carved out of that of Oregon, the Congress contented itself, as in earlier cases, with simply directing that the laws "now in force therein" by virtue of the legislation of Congress in reference to the Territory of Oregon were "continued in force in said Territory of Washington until they shall be repealed or amended by future legislation", without any express provision as to extending federal legislation to this Territory. Act of March 2, 1853, c. 90, Sec. 12, 10 Stat. 172,

[3] The Organic Act for the Territories of Nebraska and Kansas, — "the Kansas Nebraska Act", — of May 30, 1854, c. 59, 10 Stat. 277, was unusual in form, because of the slavery question. It provided, however (Sec. 14, 10 Stat. 282-283): "That the Constitution, and all Laws of the United States which are not locally inapplicable, shall have the same force and effect within the said Territory of Nebraska as elsewhere in the United States, *except*" the "Missouri Compromise" legislation.

16, 12 Stat. 239, 244;[4] for IDAHO, Act of March 3, 1863, c. 117, Sec. 13, 12 Stat. 808, 813; for MONTANA, Act of May 26, 1864, c. 95, Sec. 13, 13 Stat. 85, 91; and for WYOMING, Act of July 25, 1868, c. 235, Sec. 16, 15 Stat. 178.

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[4] The Territory of Arizona being carved out of that of New Mexico, the Congress made no special provision in its Organic Act for extending the statutory laws of the United States to the new Territory; but contented itself with providing that "all legislative enactments of the Territory of New Mexico not inconsistent with the provisions of this Act" should extend to Arizona "until repealed or amended by future legislation", *except* those recognizing the relation of master and slave, and that there should "neither be slavery nor involuntary servitude in the said Territory" otherwise than in the punishment of crime. Act of Feb'y 24, 1863, c. 56, Secs. 2 and 3, 12 Stat. 664.

## APPENDIX III

**The Acts of the Philippine Legislature creating the Philippine National Bank** provide, in pertinent part:

No. 2612.—*An Act creating the Philippine National Bank.*

Section 1. There is hereby created a bank to be known as the Philippine National Bank, the short title of which shall be the National Bank. Its principal domicile and place of business shall be in the city of Manila.

Sec. 3. The capital of the National Bank shall be twenty million pesos, Philippine currency, divided into two hundred thousand shares of the value at par, of one hundred pesos, Philippine currency, each.

Sec. 4. The Government of the Philippine Islands not later than January thirty-first, nineteen hundred and seventeen, shall purchase one hundred and one thousand shares, at par, of the said National Bank, the payment for said shares of the Government to be made as hereinafter provided. Ninety-nine thousand shares of said capital stock shall be offered to the public at par, as hereinafter provided.

Sec. 5. The following sums are hereby appropriated for the payment of the shares to be purchased by the Government of the Philippine Islands.

(a) The sum of one million three hundred thousand pesos which is hereby appropriated out of any funds in the Insular Treasury not otherwise appropriated;

(b) One million pesos, on or before July thirty-first, nineteen hundred and sixteen, and another one million pesos on or before January thirty-first, nineteen hundred and seventeen, which shall be invested from the insurance fund created by Act Numbered Seventeen hundred and twenty-eight, the public works bonds sinking fund, created by Act Numbered Seventeen hundred and twenty-nine, and the friar lands bonds sinking fund, created by Act Numbered Twenty-five hundred and fifty: * * *

Sec. 6. All the assets and liabilities of the Gov-

ernment Agricultural Bank of the Philippine Islands, created under Act Numbered Eighteen hundred and sixty-five, as amended, shall be transferred to the National Bank: *Provided*, That the transfer of the assets of the Agricultural Bank represented by the capital and the net profits thereof shall be made as part payment of the one hundred and one thousand shares subscribed by the Government of the Philippine Islands. This transfer shall be understood as taking place upon the inauguration of the National Bank in conformity with the provisions of section nine of this Act, after which the National Bank shall be subrogated to all the rights, actions and obligations of the Agricultural Bank, and the Agricultural Bank shall thereafter be deemed abolished.

Sec. 8. At no time shall shares be sold to the public if, as a result thereof, the part of the capital stock held by private investors will equal or exceed the part owned by the Government of the Philippine Islands.

Sec. 9. The National Bank shall be inaugurated within one hundred and eighty days from and after the passage of this Act, and the Governor-General shall fix such inauguration by proclamation upon the certificate of the Insular Auditor and the president of the bank that said institution is ready to begin operations.

Sec. 15. The National Bank is hereby authorized to issue real estate bonds in any sum not to exceed ninety per cent of the amount of real estate loans held by said bank, under section ten herein. Said bonds shall be engraved. Said bonds shall be signed by the president of the bank, authenticated by the Insular Auditor * * *.

Sec. 18. Said National Bank is hereby authorized to issue its notes, which said notes shall be known as circulating notes. * * *

Sec. 19. The Philippine National Bank is hereby authorized to receive deposits of funds of the Insular Government, the provinces, municipalities, Post Savings Bank, associations, corporations, and private persons, and it is hereby made obligatory for the aforesaid Insular, provincial, and municipal governments to make their deposits in the National Bank. The interest paid by said bank on deposits so made shall not

exceed four per centum per annum: *Provided, however,* That whenever in the judgment of the Governor-General, it is in the public interest to make deposits from public funds in other banks he is hereby authorized to cause the same to be done under such terms and conditions as he may deem proper.

Sec. 20. The affairs and business of the National Bank shall be managed by a board of directors consisting of the president of the bank, who shall be chief executive thereof and chairman of the board at the same time, one vice-president, who shall assist the president and act in his stead in case of absence or incapacity, and five members elected as hereinafter provided.

The president of the bank shall have power * * *. It shall also be his duty—

(a) To make, * * * all contracts * * *;

(b) To report weekly to the board of directors * * *;

(c) To furnish, upon request of the Governor-General of the Philippine Islands, any information in his possession regarding the operations of said bank.

Sec. 21. The president and vice-president shall be appointed by the Governor-General, by and with the consent of the Upper House of the Philippine Legislature, and may be removed for cause by said Governor-General, by and with the consent of said House. The five remaining members shall be elected and may be removed in accordance with the provisions of Act Numbered Fourteen hundred and fifty-nine, the Corporation Law.

Sec. 24. All the other officers and employees of said National Bank or any branch thereof, shall, before entering upon the performance of their duties, furnish a fidelity bond * * *. For this purpose, all officers and employees of the National Bank shall be deemed public officers and employees respectively, * * *.

Sec. 25. The Attorney General of the Philippine Islands shall be attorney for said National Bank: *Provided, however,* That the board of directors of said bank shall have the power to employ other attorneys in special cases.

Sec. 26. The Insular Auditor shall be *ex officio* auditor of the National Bank and it shall be his duty

to make an examination of the books and the administration of the bank at least once every three months and report thereon to the Governor-General of the Philippine Islands and the board of directors of said bank.

Sec. 27. The National Bank shall be subject to inspection by the Insular Treasurer with regard to its solvency in the manner provided by law.

Sec. 28. The Secretary of Finance and Justice, the Insular Treasurer, and the Insular Auditor are hereby prohibited from owning stock in the National Bank, or from becoming indebted to said National Bank directly or indirectly, in any sum.

Sec. 29. The Insular Treasurer and Auditor or other officers designated by law to inspect or investigate the condition of said National Bank shall not reveal to any person other than the Governor-General and the board of directors the details of the inspection or investigation, nor shall they * * *.

Sec. 33. The said National Bank, by this Act created, may establish not to exceed two branches or agencies in the United States of America, at such points as may be determined upon by the board of directors of the said National Bank. It shall be the function of each of the said agencies—

(a) To receive, transmit and disburse any funds of the Philippine Government payable in the United States.

(b) To receive, transmit and disburse any funds of the United States Government which may be placed on deposit with, or entrusted to it.

(c) To receive, transmit and disburse any funds of individuals, firms, companies or corporations engaged in business with the Philippine Islands, or having interests therein.

(d) To engage in business to the extent permitted by law of the United States with the Federal Reserve Bank of the district in which said branches or agencies may be located, and if and when permitted by law of the United States, to conduct a deposit and discount business with the said Federal Reserve Bank to the extent that conditions may require, under the instruc-

tions of the board of directors of the said National Bank.

Sec. 34. The National Bank may establish branch banks in the provincial capitals and in those municipalities in which, in the judgment of the board of directors, the industrial, commercial, or agricultural movement may require it. * * *

With the authorization of the Governor-General first had, the board of directors may appoint as agents, cashiers or tellers of said banks the provincial or municipal treasurers, * * *.

Sec. 47. All profits assigned as dividends to the shares of the Government shall be paid into the Insular Treasury, for the general funds thereof, and shall be available for any appropriation.

Sec. 48. The legal existence of the Philippine National Bank created by this Act shall be for a period of fifty years, counting from the day on which it began officially its operations. This period may be extended for fifty years more by an Act of the Philippine Legislature.

Sec. 49. All banks not organized and transacting business under a charter granted by the Philippine Legislature expressly exempting them from the restrictions and penalties of this section, and all persons or corporations doing the business of bankers, brokers, or savings institutions, are prohibited from using the word "national" as a portion of the name or title of such bank, corporation, firm or partnership; and any violation of this prohibition committed after ninety days subsequent to the date of enactment of this Act shall subject the party chargeable therewith to a penalty of not less than one hundred pesos for each day during which it is committed or repeated.

Sec. 50. For a period of six months from and after the enactment of this Act, the president, with the approval of the board of directors of the National Bank, may, with the prior approval of the proper head of Department in which such official or employee is employed, require the services of any official or employee of the Insular or provincial governments for the purpose of assisting in the organization of the National Bank: * * *

Sec. 54. This Act shall take effect on its passage. *Enacted,* February 4, 1916.

No. 2747.—*An Act to amend in certain particulars Acts Numbered Twenty-six hundred and twelve, entitled "An Act creating the Philippine National Bank."*

Section 1. In order to explain certain provisions, increase the stability of the institution, and extend its powers. Act Numbered Twenty-six hundred and twelve, entitled, "An Act creating the Philippine National Bank," is hereby amended in certain particulars, so that hereafter the said Act shall read as follows:

"Sec. 51. The Philippine National Bank is hereby authorized to guarantee, both as to principal and interest, or either, bonds issued by duly incorporated companies for the erection of and addition or additions to industrial plants or manufactories principally used for the manufacture and preparation of the products of the Philippine Islands: *Provided, however,* That such guarantee shall only be lawful when approved by a committee composed of the Governor-General of the Philippine Islands and the Presiding Officers of the two Houses of the Philippine Legislature.

"Subject to the same approval, the National Bank is hereby authorized to purchase bonds issued by any duly incorporated company engaged in the manufacture or preparation of products of the Philippine Islands. Such bonds shall be secured by a first mortgage or deed of trust on the property of the company. The face value of the bonds issued and secured by such mortgage or deed of trust shall not exceed sixty per cent (60%) of the fair value of the property securing the bonds. The property serving as security for the bonds shall consist of land, buildings, machinery, and equipment of such company in the Philippine Islands."

Sec. 2. This Act shall take effect on its approval. *Approved,* February 20, 1918.

No. 2938.—*An Act to amend Act Numbered Twenty-six hundred and twelve, entitled, "An Act creating the Philippine National Bank," as amended*

*by Act Numbered Twenty-seven hundred and forty-seven.*

Section 1. Act Numbered Twenty-six hundred and twelve, entitled, "An Act creating the Philippine National Bank," as amended by Act Numbered Twenty-seven hundred and forty-seven, is hereby amended in certain particulars, so that hereafter the said Act shall read as follows:

"Section 1. There is hereby created a bank to be known as the Philippine National Bank, the short title of which shall be the National Bank. Its principal domicile and place of business shall be in the city of Manila.

"Sec. 2. • • •

"Sec. 3. The National Bank is hereby authorized to increase its capital from twenty million pesos, Philippine currency, to fifty million pesos, Philippine currency, and may for this purpose make a new issue of three hundred thousand shares of stock, which shall be denominated the second issue, at the par value of one hundred pesos, Philippine currency, each. —

"Sec. 4. The Government of the Philippine Islands, not later than June thirtieth, nineteen hundred and twenty-one, shall purchase all remaining shares of the first issue and part of those of the second issue to the aggregate number of not less than one hundred and fifty-three thousand, at par, the payment of the said shares of the Government to be made as hereinafter provided. The remaining shares may be offered to the provincial and municipal governments or to the public at a price not below par which the board of directors of the Bank shall from time to time determine: *Provided,* That the Government of the Philippine Islands, upon agreement with the board of directors of the Bank, may at any time after June thirtieth, nineteen hundred and twenty-one, purchase all or part of the stock on hand at a price not below par.

"The voting power of all the stock of the National Bank owned and controlled by the Government of the Philippine Islands shall be vested exclusively in a board, the short title of which shall be 'Board of Con-

trol,'* composed of the Governor-General, the President of the Senate, and the Speaker of the House of Representatives.

"Sec. 5. There are hereby appropriated, out of any funds in the Insular Treasury not otherwise appropriated, such sums as may be necessary for the payment of the shares to be purchased by the Government of the Philippine Islands: *Provided,* That the capital and surplus of the Agricultural Bank of the Philippine Islands shall be applied primarily to said payment: *And provided, further,* That no sum shall be set up on the books of the Auditor until it shall be necessary to make the payment or payments authorized by this Act.

No. 3174.—*An Act to rehabilitate the Philippine National Bank, making certain appropriations for this purpose and amending the Charter of said Bank contained in Act Numbered Twenty-six hundred and twelve, as amended, and for other purposes.*

Section 1. The authorized paid-up capital stock of the Philippine National Bank is hereby reduced to one hundred thousand shares of the value at par of one hundred pesos each, which number shall include the shares at present held by the public: *Provided,* That the Bank may purchase the shares held privately at the price at which they were quoted on the date of the registration of the sale in the books of the Bank, provided such price does not exceed their value at par. The Board of Directors, with the approval of the Secretary of Finance, shall determine what was the price so quoted. No stock shall be sold to the public hereafter.

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* This voting provision was held invalid by this court, holding that the voting power, an executive function, is in the Governor-General. *Springer* vs. *Gov't of the Philippine Islands,* 277 U. S. 189, 197 *et seq.* 209.

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SEP 11 1935

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1935

## No. 114

JUAN POSADAS, JR., Collector of Internal Revenue of the Philippine Islands, *Petitioner,*

vs.

THE NATIONAL CITY BANK OF NEW YORK, *Respondent.*

**REPLY BRIEF FOR PETITIONER IN SUPPORT OF PETITION FOR CERTIORARI**

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Since the petition for certiorari and supporting brief were filed, the opinion of the Supreme Court of the Philippine Islands in this case has been reported in the Philippine Official Gazette, in its issue of July 23, 1935, Vol. XXXIII, p. 1706.

I

Respondent's "Memorandum" in opposition seeks to ignore the marked distinction we pointed out [1] between the Philippine Islands on the one hand, and Puerto Rico and the other possessions and Territories of the United States

[1] Petition for certiorari, p. 2, footnote 2, and p. 11; Supporting brief, pp. 14-15, and 19 *et seq.*

on the other hand, in relation to the question here presented. Respondent makes no direct answer to our brief on this point.

II

As to the Philippine Islands, the distinctive purpose of the Congress was emphasized by the insertion of the unusual second paragraph in section 7 of the present Philippine Organic Act of August 29, 1916,[2] by which, after giving the Legislature power "when not inconsistent with this Act, by due enactment" to "amend, alter, modify or repeal, any law, civil or criminal, continued in force by this Act as it may from time to time see fit", it is further expressly provided that:

> "*This power shall specifically extend,* with the limitation herein provided as to the tariff, *to all laws relating to revenue and taxation in effect in the Philippines.*"

That is a most unusual provision in a territorial organic act. No such power is given the Puerto Rican Legislature. The corresponding section of the Puerto Rican Organic Act is section 57 of that Act ("Jones Law" for Puerto Rico, Act of March 2, 1917, c. 145, 39 Stat. 951, 968; 48 U. S. C. 735) containing almost word for word the same power granted the Philippine Legislature by the first paragraph of section 7 of the Philippine Act, "by due enactment to amend, alter, modify, or repeal, any law or ordinance, civil or criminal, continued in force by this Act as it may from time to time see fit", *but without any such power as that given the Philippine Legislature by the second paragraph of section 7 of the Philippine Act* "specifically" extending that Legislature's power over *"all laws relating to revenue and taxation in effect in the Philippines"*.

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[2] 39 Stat. 545, 547; 48 U. S. Code 1005; quoted on page 4 of the Petition for certiorari.

The omission of that clause from the Puerto Rican Act is very significant. The Philippine Act was approved August 29, 1916. The Puerto Rican Act was passed at the next following "short session" of the same Congress, and approved March 2, 1917. Both acts were introduced by Representative William A. Jones, chairman of the House Insular Affairs Committee, and both are popularly known by his name, the "Jones Law" for the Philippines, and the "Jones Law" for Puerto Rico, respectively.

**Thus this broad extension of the powers granted to the Philippine Legislature by the express provision of this second paragraph of section 7 of the Philippine Act to amend or repeal "all laws relating to revenue and taxation in effect in the Philippines", was deliberately omitted from the powers given the Puerto Rican Legislature. That emphasizes the Congressional intention to leave the Philippines free to frame their own systems of revenue and taxation.** In view of this provision of section 7 of the Philippine Organic Act, it seems plain that, even if the taxing section of the National Bank Act had ever gone into effect in the Philippines, then, being a "law relating to * * * taxation", it would have been subject to this express provision granting the Philippine Legislature the power to amend or repeal it; which was exercised by the contrary provisions of sections 1499 and 1502 of the Philippine Administrative Code of 1917 (Petition, pp. 6-7) for taxing all banks in the Islands uniformly, under which the taxes here in question were levied.

## III

Respondent's "Memorandum" likewise studiously ignores the significant history of the enactment of the Federal Reserve Act and its amendments, to which attention is invited in our original brief,—*that only nine days after the enactment of the "Jones Law", the Organic Act for the Philippine Islands,* with its provision, in section 5, that "the statutory laws of the United States hereafter enacted

shall not apply to the Philippine Islands, except when they specifically so provide, or it is so provided in this Act",[3] *the Congress amended the Federal Reserve Act by inserting "or insular possessions"* after "dependencies" in section 25 of the Act, *without making any reference to the Philippine Islands;* with the resulting necessary inference that, in thus omitting any reference to the Philippine Islands in so amending the Federal Reserve Act only nine days after making its express declaration in section 5 of the Philippine Organic Act that its laws thereafter enacted should not run to the Philippines unless it should itself specifically so direct in any particular case, the Congress must be taken to have intended deliberately to express its will that section 25 of the Federal Reserve Act as thus amended should not run to the Philippines. (*Our original brief,* pp. 31-33, 43-45.)

Respondent chooses to ignore all that, as also that the Congressional intention was emphasized again by the further amendment of section 25 of the Federal Reserve Act three years later, by section 2 of the Act of September 17, 1919 (c. 60, 41 Stat. 285, 286; 12 U. S. C. 601), again pointedly omitting specifically to name the Philippine Islands. (*Our original brief,* p. 32.) And also that the general administrative understanding that section 25 of the Federal Reserve Act, authorizing the establishment of branches of national banks outside of the continental United States, did not run to the Philippine Islands, nor authorize the establishment of any such branch in those Islands, is further indicated by the fact that the Federal Reserve Board never gave any permission at all to establish any such branch in those Islands during all the years following the enactment and amendments of that section of the Act, including the prosperous decade of the 1920's, up until this permission given to this respondent bank to establish two branches in

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[3] 39 Stat. 545, 547; 48 U. S. Code 1003; quoted, Petition for certiorari, p. 4.

Manila and Cebu, in the year 1930. (R. 42-43; and *original brief*, p. 33.)

Respondent attempts no answer to any of this.

IV

On page 3 of our original brief, under "Statutes", there is quoted the provision in the first section of the "Foraker Act" of July 1, 1902, for the Philippines, that "The provisions of section 1891 of the Revised Statutes of 1878 shall not apply to the Philippine Islands".

This is in reality an affirmative declaration by the Congress of its will that the general statutory laws of the United States which run throughout the Union and which, by section 1891 of the Revised Statutes likewise run generally to all the organized Territories, SHOULD NOT RUN to the Philippine Islands. That is in direct antithesis to the contrary provision in the "Foraker Act" of April 12, 1900, for Puerto Rico that the laws of the United States not locally inapplicable shall run to that island.[4] While this provision of the Philippine Act is in negative form, and is not expressed in as positive language as was afterward done in section 5 of the present Organic Act, yet it expresses the same intent, particularly when taken in connection with the fact that the Congress, in relation to the Philippine Islands, reverted to its habit of the early days of the Nineteenth Century of directing specifically which statutes should run to the Philippine Islands (*our brief*, pp. 14-15, 25-26; and *confer* its Appendix II, pp. 62-66), with the clear implication that other statutes should not run there.

The National Bank Act was a "law of the United States" in existence when the Philippine "Foraker Act" was passed in 1902. The Congress did not choose to direct that it should run there. It follows that it never did take effect in those Islands, and is not in force there.[5]

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[4] c. 191, sec. 14, 31 Stat. 77, 80.

[5] The only amendments of the taxing section of the Na-

v

The situation as to the Federal Reserve Act not running to the Philippines is wholly analogous to that with relation to the National Bank Act. It is true that the Federal Reserve Act was originally enacted in 1913 before the present Organic Act for the Philippines of August 29, 1916, and that section 25 of the Federal Reserve Act as originally enacted in 1913 (c. 6, 38 Stat. 251, 273; Petition, Appendix I, pp. 55-56), contained a provision authorizing the Federal Reserve Board to permit national banks to establish branches "*in foreign countries or dependencies* of the United States for the furtherance of the foreign commerce of the United States and to act, if required to do so, as fiscal agents of the United States". **But it is also true that (1)** when the Federal Reserve Act was enacted in 1913 there was already in force the provision of the first section of the Foraker Act of 1902 for the Philippines, which was the Organic Act for those Islands in force at that time, containing the provision that section 1891 of the Revised Statutes should not run to the Philippine Islands, thereby clearly expressing the will of the Congress that the statutory laws of the United States should, generally, not run to those Islands; **that (2)** the Federal Reserve Act did not specifically mention the Philippine Islands, and there is nothing either in that Act itself or in any other Act of the Congress, specifically directing that it should run there; **that (3)** the Congress had already six years before that

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tional Bank Act (R. S. 5219) enacted since 1902 were in 1923 and 1926 respectively (Acts of March 4, 1923, 42 Stat. 1499; and March 25, 1926, 44 Stat. 223; Petition, Appendix I, pp. 54-55), *both passed after the present Philippine Organic Act* of August 29, 1916, and neither of them specifically mentioning the Philippine Islands; *and no amendment of the National Bank Act has ever specifically mentioned those Islands, or extended the Act there;* thus again emphasizing the intention of the Congress that the National Bank Act should not run to those Islands.

time, by the Act of March 4, 1907 (c. 2908, 34 Stat. 1282; Petition, Appendix I, p. 50) provided for the establishment of an official government bank in the Philippines, the Agricultural Bank, and had authorized the Philippine government to guarantee an income of not exceeding 4 per cent upon the capital stock of that bank (afterwards converted into the present Philippine National Bank which is "subrogated to all of the rights, actions and obligations of the Agricultural Bank"; Sec. 6, Act creating the Philippine National Bank, Feb. 4, 1916, and is almost wholly government owned; Petition and supporting brief, pp. 32-33, and Appendix III, 67-68); **and that (4)** no branch of any national bank was ever authorized by the Federal Reserve Board at any time prior to the amendment of Section 25 of the Federal Reserve Act by the Act of September 9, 1916 (or ever at any time, prior to the permit of 1930 to the present respondent bank to establish branches in Manila and Cebu).

**It follows that (1)** there was in Section 25 of the Federal Reserve Act as originally enacted in 1913, no sufficiently clear expression by the Congress of any specific intent that it should run to the Philippine Islands to take it out of the general rule theretofore established by the Congress by the first section of the Foraker Act then in force as the Organic Act for the Philippines, that the general statutory laws of the United States should not extend to those Islands; **and (2) that** it seems to have been the accepted administrative interpretation of the Act that it did not run there, since the Federal Reserve Board gave no license to establish branches of national banks in those Islands prior to the amendment of Section 25 of the Federal Reserve Act by the Act of September 9, 1916.

*Therefore, no such license having ever been actually granted prior to 1916, any possible question that might have been raised before that date as to whether or not, under the original Act of 1913, a Philippine branch of a national bank of the United States might validly have been established prior to the amendment of September 9, 1916,*

*is wholly academic.* It was not in fact done; no national bank attempted to establish a branch in those Islands during that period. By the amendatory act of September 9, 1916, only nine days after the new Organic Act for the Philippines, making the phraseology of Section 25 of the Federal Reserve Act read, in general terms, "dependencies or insular possessions", *without specifically mentioning the Philippine Islands,* the Congress deliberately expressed its will (in connection with the provision of Section 5 of the then new Philippine Organic Act adopted only nine days previously) that that section of the Federal Reserve Act should not run to those Islands.

And did so again, three years afterwards, by the second amendatory act of 1919, again omitting to make any specific reference to those Islands (*supra,* Point III, and our original brief, pp. 31-33). In any event, therefore, Section 25 of the Federal Reserve Act has not been in effect in the Philippines since September 9, 1916; was not in effect there in January 1930 when the Federal Reserve Board gave its license (R. 42-43) purporting to permit this respondent bank to establish branches in Manila and Cebu; has never been in force in those Islands at any time since; and is not in force there now. It follows that the Federal Reserve Board's license of January 23, 1930 (R. 42-43) to the respondent bank was simply void. That the respondent bank's branches in Manila and Cebu are not in any sense statutory branches of a national bank of the United States under the Federal Reserve Act; and that whatever right to existence they may have in the Islands, or to continued toleration there, they owe wholly to Philippine law. They are, therefore, wholly subject to the Philippine laws, and to taxation in accordance with those laws. So far as the validity of the taxes here involved is concerned, their connection with the National City Bank of New York is wholly incidental, and of no legal significance whatever.[6]

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[6] The opinions of Attorney General Stone and Attorney General Sargent which respondent quotes (34 Ops. Atty. Gen.

VI

The consistent distinction maintained by the Congress in its policies with relation to Puerto Rico on the one hand, and the Philippine Islands on the other hand, and the reasons for the different treatment of those possessions, is emphasized by the collation of pertinent Congressional Acts and Resolutions in parallel columns in the Appendix, *infra*, pp. 15-20, to this Reply Brief.

VII

*Respondent* (*"Memorandum"* pp. 8-9) *expressly agrees* with what we said (*Petitioner's brief*, pp. 17, 38-39, and 40-41) *that, since the taxing section of the National Bank Act does not run to the Philippine Islands, it necessarily follows that,* **unless we are correct in our position that the Legislature may tax these "branch" banks of the respondent in Manila and Cebu, as it may all other banks in the Islands, under the general legislative and taxing powers given it by the Congress** (including the specific power under the second paragraph of Section 7 of the Organic Act, *supra*, "specifically" extending the Legislature's powers to the amendment, modification or repeal of "all laws re-

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291; 34 Ops. Atty. Gen. 460, 465-466; cited in respondent's "Memorandum" pp. 4-5) are in no way to the contrary of this. They hold, simply, that the Philippine Islands came under the sovereignty of the United States by the treaty with Spain and are subject to the control of the Congress as a dependency or possession or "territory of the United States" within the meaning of the provision of clause 2 of section 3 of Article IV of the Constitution giving the Congress power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States. Of course the Congress might have extended the National Bank Act, or the Federal Reserve Act, to the Philippines, or might have completely incorporated the Philippines into the Union, as it has done with Hawaii, if it had seen fit to do so. But it did not so choose.

lating to revenue and taxation in effect in the Philippines"), then *the insular government possesses no power whatsoever to tax these "branch" banks in any way at all;* and, that, as the respondent phrases it in its "Memorandum" in opposition (p. 9):

> "It follows that, if Section 5219 does not extend to the Philippines, the real property tax and the income tax, which are not questioned by the respondent, are also void."

**A.—That is one of the strongest arguments for the correctness of our position.** As pointed out in our original brief (Point III, pp. 34-42), **it is not to be presumed that the Congress intended to permit branch banks to be established in the Philippine Islands wholly exempt from local taxation of any kind.**

As we there said, it is wholly a question of the intention of the Congress, to be gathered from the "four corners" of all the pertinent Congressional legislation, in view of all the circumstances and the established purpose of the Congress with relation to the Philippine peoples and their government. The insular government is an

> "instrumentality established by Congress for the government of the people within its boundaries, with authority to sub-delegate the governmental power to the several municipal corporations therein" (*Farmers Bank* v. *Minnesota,* 232 U. S. 516, 524; quoted by Attorney General Sargent in his opinion to the Secretary of War, April 17, 1925, with relation to the Philippine Islands, 34 Ops. Atty. Gen. 460, 466,—the same opinion cited on pp. 4-5 of respondent's "Memorandum").

It was of course wholly within the power of the Congress to give to, or to withhold from, that "instrumentality" of the Congressional will, the power to tax any banks located within its local jurisdiction. It is unbelievable that the Congress intended wholly to deny it the local taxing power; particularly since the Congress has not seen fit to extend Section 25 of the Federal Reserve Act to those Islands,

and, therefore, any "branches" established there by a national bank of the United States are not, in any possible sense, fiscal agencies or "instrumentalities" of the federal government.

**B.—Respondent attempts no answer whatever to this point of our brief,** except to say, baldly, (*Respondent's "Memorandum"*, p. 9) that:

> "The issue does not depend, as contended by the petitioner, upon the question whether there is a Federal statute *limiting* the general taxing power of the Philippine government, but as held in the *Domenech* case, upon whether the power to tax the bank has been *granted* to the dependency clearly and explicitly by Act of Congress."

*That is simply an attempt by the respondent completely to ignore all that is said in our brief* as to the distinction between the Congressional intent with reference to Puerto Rico on the one hand, and with reference to the Philippine Islands on the other hand (*Petitioner's brief,* Point I, pp. 19-33), *and also completely to ignore all that is said in* Point III *of our brief* under the heading *"There is no implied prohibition preventing the Philippine Government from levying these taxes, or collecting them"* (*Petitioner's brief,* pp. 34-42), **without attempting any answer whatever to our arguments.**

VIII

**Respondent's "Memorandum" likewise attempts no answer** whatever to what is said in Point IV of our brief (pp. 42-43) under the heading *"The Congress, by Section 6 of the present Organic Act for the Philippines expressly ratified the sections of the Philippine Administrative Code under which the taxes here involved were imposed."*

IX

**Respondent likewise attempts no direct answer** to what is said in Point V of our brief (pp. 43-45) under the head-

ing that "*There is no Federal statute authorizing the establishment of branches of United States national banks in the Philippine Islands*",[7] in connection also with what we said in Point I-1 of our brief (pp. 31-33), wherein, in summing up the result of those Points, we specifically pointed out (brief, p. 44) the necessary conclusion that:

> "Whatever else those so-called "branches" of the National City Bank in the Philippine Islands may really be,—if there is any legal authority whatever for their existence at all,—*they are not really branches of the National City Bank of New York under Section 25 of the Federal Reserve Act or any other act of the United States.* They owe their existence in the Philippine Islands, and their continued tolerance there, wholly to Philippine law. Whether they are to be looked upon as foreign banks within the Islands, or as *de facto* domestic banks of the Islands existing and carrying on business there under Philippine law,—in any event they are not, in any proper sense, "branches" of a national bank of the United States existing under any license from the Federal Reserve Board; since the Board has no power,—and never has had any power,—to license a branch bank in the Philippine Islands";

whence it necessarily follows further, as above pointed out, that these so-called "branches" thus established in those Islands without the authority of any Act of Congress

---

[7] "* * * the provisions of section 1 of the Act of July 1, 1902 (32 Stat. 691), in which Congress specifically withheld from the Philippine Islands the application of Section 1891 of the Revised Statutes, *thus expressing its intention that the laws of the United States should not apply to the Philippines unless the intention to that effect was clearly expressed.* It may also be added that there appears to be nothing in the legislative history of the Narcotic Drugs Import and Export Act" (*Federal Reserve Act; National Bank Act*) "which discloses any specific intention that said laws should apply in the Philippines". (34 Ops. Atty. Gen. 550, 552-553, *re* Narcotic Drugs Act; *our original brief*, p. 29.)

can in no sense be considered fiscal agencies or "instrumentalities" of the Federal government, and can in no way claim to be entitled to the benefit of any possible presumption that the Congress may not have intended a "subordinate government" to tax an "instrumentality" of the federal government.

Respectfully submitted,

WILLIAM CATTRON RIGBY,
*Attorney for Petitioner.*

SERAFIN P. HILADO,
*Solicitor-General of the Philippine Islands,*
*Of Counsel.*

## APPENDIX

### OPPOSITE CONGRESSIONAL POLICIES WITH RESPECT TO PUERTO RICO ON THE ONE HAND, AND THE PHILIPPINES ON THE OTHER HAND

TREATY OF PEACE WITH SPAIN, signed at Paris December 10, 1898; ratification advised by the Senate, February 6, 1899; proclaimed April 11, 1899.

ARTICLE IX: "* * * The civil rights and political status of the native inhabitants of the territories hereby ceded to the United States shall be determined by the Congress" (30 Stat. 1754, 1759).

CONSTITUTION

ARTICLE IV, Section 3, Clause 2 "The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territories or other Property belonging to the United States."

| PHILIPPINES | PUERTO RICO |
| --- | --- |
| *Senate Resolution upon advising ratification of the Treaty, debated February 6, 1899, passed February 14, 1899* (Cong. Rec. Vol. 32; Part 2, pp. 1479, 1480, 1487, 1846, 1847-1848) | *No corresponding resolution; nothing of that kind.* |
| "*Resolved by the Senate and House of Representatives of the United States of America in Congress Assembled,* That by the ratification of the treaty of peace with Spain it is not intended to incorporate the inhabitants of the Philippine Islands into citizenship of the United States, nor is it intended to permanently an- | |

nex said islands as an integral part of the territory of the United States; but it is the intention of the United States to establish on said islands a government suitable to the wants and conditions of the inhabitants of said islands to prepare them for local self government, and in due time to make such disposition of said islands as will best promote the interests of the citizens of the United States and the inhabitants of said islands."

---

PHILIPPINES

*"Foraker Act", first Organic Act, July 1, 1902* (c. 1369, sec. 1, 32 Stat. 691):

"The provisions of Section 1891 of the Revised Statutes of 1878[8] shall not apply to the Philippine Islands."

[8] Section 1891 of the Revised Statutes is the section extending, generally, "The Constitution and all laws of the United States which are not locally inapplicable" to the Territories.

PUERTO RICO

*"Foraker Act", first Organic Act for Puerto Rico,* Act of April 12, 1900 (c. 191, sec. 14, 31 Stat. 77, 80):

"The statutory laws of the United States not locally inapplicable, except as hereinbefore or hereinafter otherwise provided, shall have the same force and effect in Porto Rico as in the United States, except the internal-revenue laws."

---

PHILIPPINES

*"Jones Law", the second (present) Organic Act of August 29, 1916* (c. 416, 39 Stat. 545:

PREAMBLE

"Whereas it was never

PUERTO RICO

*"Jones Law", the second (present) Organic Act for Puerto Rico, March 2, 1917,* c. 145, 39 Stat. 951.

*No corresponding provision. Nothing of that kind at all.*

the intention of the people of the United States in the incipiency of the War with Spain to make it a war of conquest or for territorial aggrandizement; and

"Whereas it is, as it has always been, the purpose of the people of the United States to withdraw their sovereignty over the Philippine Islands and to recognize their independence as soon as a stable government can be established therein; and

"Whereas for the speedy accomplishment of such a purpose it is desirable to place in the hands of the people of the Philippines as large a control of their domestic affairs as can be given them without, in the meantime, impairing of the rights of sovereignty by the people of the United States in order that, by the use and exercise of popular franchise and governmental powers, they may be better prepared to fully assume the responsibilities and enjoy all the privileges of complete independence."

---

PHILIPPINES

*"Jones Law", Act of August 29, 1916, supra:*

"Sec. 2. That all inhabitants of the Philippine Is-

PUERTO RICO

*"Jones Law", Act of March 2, 1917, supra:*

"Sec. 5. That all citizens of Puerto Rico, * * * and all

lands who were Spanish subjects * * * and their children * * * shall be deemed and held to be citizens of the Philippine Islands, except such as * * *: *Provided*, That the Philippine Legislature * * * is hereby authorized to provide by law for the acquisition of Philippine citizenship * * *.

natives of Puerto Rico who were temporarily absent from that island on April 11, 1899, and have since returned and are permanently residing in that island, and are not citizens of any foreign country, are hereby declared, and shall be deemed and held to be, citizens of the United States."

---

PHILIPPINES

*"Jones Law", Act of August 29, 1916, supra:*

"Sec. 5. That the statutory laws of the United States hereafter enacted shall not apply to the Philippine Islands, except when they specifically so provide, or it is so provided in this Act."

PUERTO RICO

*"Jones Law", Act of March 2, 1917, supra:*

"Sec. 9. That the statutory laws of the United States not locally inapplicable, except as hereinbefore or hereinafter otherwise provided, shall have the same force and effect in Porto Rico as in the United States, except the internal-revenue laws."

---

PHILIPPINES

*Sections of the Revised Statutes and other laws of the United States which the Congress desires to have run to the Philippines are* EXPRESSLY EXTENDED *by Act of Congress;* as, for example, Act of February 9, 1903, c. 529, 32 Stat. 806, specifically extending sections 1014 and 5278 and 5279 of the Revised Statutes to the Philippine Islands "so far as applicable"; and Act of Feb-

PUERTO RICO

TO THE EXACT CONTRARY.

*Laws of the United States* NOT *desired to run to Puerto Rico are* EXPRESSLY EXCEPTED *by the Congress from the effect of the general language of Section 9 of the Puertan Rican Organic Act, supra, and are expressly directed* NOT TO RUN TO PUERTO RICO; as for example, the second paragraph of Section 38 of the Organic Act

| | |
|---|---|
| ruary 6, 1905, c. 454, 33 Stat. 698, "*An Act to Extend Certain Provisions of the Revised Statutes of the United States to the Philippine Islands*". | for Puerto Rico (39 Stat., at p. 964) directing that:<br><br>"The Interstate Commerce Act and the several amendments * * * the safety-appliance Acts * * *, and the Act of Congress entitled, * * *, shall not apply to Puerto Rico'". |

| PHILIPPINES | PUERTO RICO |
|---|---|
| *Separate coinage laws* (the peso instead of the dollar); *separate tariff laws;* and *separate immigration laws* (with power in the Philippine Legislature, with the approval of the President individually, to amend the tariff laws and the immigration laws for those Islands); *a separate Philippine customs service,* with a separate insular Collector of Customs; *separate banking laws authorizing the Philippine Legislature to guarantee the income on the capital stock of a Philippine government bank* (the Agricultural Bank, now the Philippine National Bank); and *separate navigtion laws* (the Coastwise Shipping Laws of the United States not extended to the Philippines).<br><br>(See the Acts of Congress collected in Appendix I, pp. 47-53 of our original brief.) | *No such separate provisions; nothing of that kind at all.*<br><br>The United States currency is the currency of Puerto Rico, as it is of the mainland; the United States tariff laws, immigration laws, and coastwise shipping laws are in force in Puerto Rico; no separate government bank has ever been authorized for that Island. |

| PHILIPPINES | PUERTO RICO |
|---|---|
| *Important Acts of Congress* | *No such decisions at all.* |

*held not to run to the Philippine Islands, although containing language broadly directing that they run to all the territories and every place under the "control or jurisdiction" of the United States, or like expressions, where the Congress had not seen fit to insert words "specifically" mentioning the Philippine Islands:*

1. "The Volstead Act", National Prohibition Act; 32 Ops. Atty. Gen. 258, 259.
2. The Narcotic Drugs Act; 34 Ops. Atty. Gen. 550, 551-553.
3. The National Industrial Recovery Act,— Ops. Atty. Gen.—(Advance Sheets, December 2, 1933).

(See as to above opinions of the Attorneys General, *our original brief*, pp. 26-29.)

| PHILIPPINES | PUERTO RICO |
| --- | --- |
| *Independence Act* of March 24, 1934, c. 84, 48 Stat. 456, under which the new "Commonwealth Government" of the Philippines is being organized; contemplating complete political independence in about ten years. | *Nothing of the kind.* |

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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1935

## No. 114

JUAN POSADAS, JR., Collector of Internal Revenue of the Philippine Islands, *Petitioner*,

vs.

THE NATIONAL CITY BANK OF NEW YORK, *Respondent*.

**BRIEF FOR PETITIONER**

WILLIAM CATTRON RIGBY,
*Attorney for Petitioner*.

SERAFIN P. HILADO,
*Solicitor-General of the Philippine Islands*,
*Of Counsel*.

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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1935

## No. 114

JUAN POSADAS, JR., Collector of Internal Revenue of the Philippine Islands, *Petitioner,*

vs.

THE NATIONAL CITY BANK OF NEW YORK, *Respondent.*

### BRIEF FOR PETITIONER

*To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:*

This case involves the power of the Philippine Government to tax the Philippine branches of the National City Bank of New York. The Bank sued the Collector for a refund of ₱77,324.11 paid under protest, partly taxes on its capital employed in the Islands ("capital taxes"), and partly taxes on its deposits in the Islands ("deposits taxes"). The Court of First Instance held the deposits taxes invalid and directed their refund, but sustained the capital taxes (R. 136-137). The Philippine Supreme Court, — the CHIEF JUSTICE taking no part, and JUSTICE SANTOS dissenting,— held both classes of taxes invalid as beyond

the power of the insular government (R. 142-156; 156-161).[1] This court granted certiorari (R. 178).

## QUESTION PRESENTED

The single question is whether the Philippine Government may tax the Philippine branches of the National City Bank of New York, a national banking association ("national bank") of the United States.

This divides itself into two: (a) Does either the tax section of the National Bank Act,[2] or Section 25 of the Federal Reserve Act[3] authorizing the establishment of "foreign branches" of national banking associations of the United States, extend to the Philippines? And (b) is there any implied prohibition against the insular government taxing the Philippine branches of a national bank?[4]

## STATUTES

Pertinent provisions of Acts of Congress and of Philippine statutes are in the Appendices (*infra*, pp. 47-90).

## STATEMENT

This was an action in the insular Court of First Instance

---

[1] Reported in Philippine Official Gazette, July 23, 1935, Vol. XXXIII, p. 1706.

[2] Section 41 of the National Bank Act of June 3, 1864, c. 106, 13 Stat. 99, 112, as reenacted in Section 5219 of the Revised Statutes, as amended by the Act of March 25, 1926, c. 88, 44 Stat. 223; 12 U. S. Code, Supp., 548.

[3] Section 25 of the Federal Reserve Act of December 23, 1913, c. 6, 38 Stat. 251, 273, as amended by the amendatory Act of September 7, 1916, c. 461, 39 Stat. 752, 755, and as further amended by Section 2 of the Act of September 17, 1919, c. 60, 41 Stat. 285, 286; 12 U. S. Code, 601.

[4] The question here presented differs sharply from that in *Manuel V. Domenech, Treasurer of Puerto Rico*, v. *National City Bank of New York*, No. 386 at the October Term, 1934, of this court, decided February 4, 1935, 294 U. S. 199, in that the statutory laws of the United States not locally inapplicable are expressly extended to Puerto

of Manila by the respondent bank against this petitioner as Collector of Internal Revenue of the Philippine Islands to recover ₱77,324.11 paid by the respondent bank under protest on October 23, 1931, **"as deposit and capital taxes, for the first half of the year 1931"** (R. 2). The plaintiff bank (respondent here) alleged in its complaint in the Court of First Instance (Par. II; R. 2-5):

> "That for the same period the Collector has demanded and received a return of income upon which income tax will be collected. That the Administrative Code of the Philippine Islands provides for the collection from all banks doing business in the Philippine Islands of deposit and capital taxes and Act 2833 as amended, provides for the collection of income taxes from all corporations and associations doing business in the Philippine Islands and deriving its income therefrom. That under the laws of the United States national banks are instrumentalities of the United States of America upon which no taxes may be levied except as provided by the laws of the United States of America. The law of the United States of America permitting the taxation of national banks (section 548, United States Code, annotated), reads as follows:" [*quoting Section* 548, Title XII, U. S. Code, Supp.; *which is* R. S. 5219 *as amended;* Appendix I, *infra,* pp. 57-58); *and then proceeding*] "That there is no provision in the laws of the United States of America authorizing the Philippine government to tax a na-

---

Rico by the Organic Act of Congress for that Island, Act of March 2, 1917, c. 145, Sec. 9, 39 Stat. 951, 954 (48 U. S. Code, 734); whereas, directly to the contrary, the Organic Act for the Philippine Islands provides:

> "That the statutory laws of the United States hereafter enacted *shall not apply* to the Philippine Islands, except when they specifically so provide, or it is so provided in this Act." (Act of August 29, 1916, c. 416, Sec. 5, 39 Stat. 545, 547; 48 U. S. Code 1003; *infra,* Appendix I, p. 48; *Italics supplied.*)

tional banking association both upon its capital and deposits and also impose an income tax upon its earnings."

The defendant Collector (this petitioner) in his answer in the Court of First Instance (R. 8) denied generally that the bank had any right of recovery, and insisted that the tax was properly collected under Section 1499 of the Philippine Administrative Code, as amended by Philippine Act 3199 (*infra*, Appendix I, p. 63). The case came on for trial before the Court of First Instance on August 28, 1933, and evidence oral and documentary was received, including copies of the articles of association of the respondent bank (R. 29-38), and of the order of the Federal Reserve Board, January 23, 1930, granting the bank's application for permission to establish branches in Manila and Cebu in the Philippine Islands ("Exhibit B", R. 39-43). The bank's by-laws were also offered in evidence ("Exhibit C", R. 48-61), and a "condensed statement of condition June 30, 1931, of The National City Bank of New York, including domestic and foreign offices" ("Exhibit D", R. 61-70), and a copy of the power of attorney to the manager of its Manila branch ("Exhibit E", R. 71-82), with a detailed statement of the monthly amounts of deposits and capital employed in the Manila Branch, for the six months ending June 30, 1931 ("Exhibit F", R. 83-112). Statements were also introduced showing how the amounts of the capital taxes and the deposits taxes respectively were computed ("Exhibits F to L", inclusive; R. 83-131). No question appears to have been made in the pleadings or at the trial or anywhere in the record of this case of the correctness and accuracy of the amounts of the taxes involved,—the "capital taxes" and the "deposits taxes" respectively,—or that they were properly computed and levied in accordance with the provisions of the Philippine statutes. The only question in this case is as to the power of the Philippine government to levy the taxes; that is to say as to the

validity of the statute so far as it attempts to levy these taxes upon these "branches" in the Philippines of the National City Bank of New York.

### DECISION OF THE COURT OF FIRST INSTANCE

The "Decision" of the Court of First Instance, October 16, 1933 (R. 132-137), upheld the "capital taxes"; but held the "deposits taxes" invalid, and directed the refund of their amount, ₱61,219.43, to the plaintiff bank.

### OPINION OF THE PHILIPPINE SUPREME COURT

The opinion of the Supreme Court of the Philippine Islands is reported in the Philippine Official Gazette, in its issue of July 23, 1935, Vol. XXXIII, p. 1706. The decision was by a divided court. The majority opinion and the judgment of the court (BUTTE, J., R. 142-156, 174-175) affirms the judgment of the Court of First Instance insofar as that court held the "deposits taxes" invalid, but reverses it insofar as that court upheld the validity of the "capital taxes".

The effect of the judgment of the insular Supreme Court is, therefore, to hold the insular government without power to levy either the "capital taxes" or the "deposits taxes", —that is, it held all of the taxes involved in this case, of both classes, invalid, and beyond the power of the insular government to levy. The CHIEF JUSTICE took no part in the decision (R. 156); and JUSTICE SANTOS (R. 156-161) filed a vigorous dissenting opinion.

### PETITIONER'S CONTENTION

Petitioner believes that both classes of the taxes here involved,— both the "capital taxes" and the "deposits taxes",— were validly levied; that it is within the power of the Philippine Government to impose them; that neither Section 25 of the Federal Reserve Act authorizing "foreign branches" of national banks, nor the taxing section of the

National Bank Act (R.S. 5219) runs to the Philippine Islands; and that, therefore, the so-called "branches" of the National City Bank of New York in the Philippine Islands are not in reality or legally branches of a national banking association of the United States, and that there is no federal statute limiting the general legislative and taxing powers given to the Philippine Legislature by the Organic Act in relation to taxing them; and that there is no implied limitation on those powers, so far as these taxes are concerned. And that, therefore, the judgment of the Philippine Supreme Court in this case is wrong, and should be reversed, and the taxes here involved held valid.

The single question is of the power of the Philippine Government to tax these so-called "branches" in the Philippine Islands of a national banking association of the United States.

## JURISDICTION

The final judgment of the Philippine Supreme Court was entered October 10, 1934 (R. 174-175). On April 3, 1935, Mr. Justice Sutherland made an order extending the time within which to apply to this court for a writ of certiorari until June 9, 1935 (R. 177; for sixty days after April 10th). The petition for certiorari was filed June 8, 1935, within the time thus limited. Certiorari was granted October 14, 1935 (R. 178) under section 7 of the Jurisdiction Act of February 13, 1925, c. 229, 43 Stat. 936, 940. The value in controversy here, ₱77,324.11 ($38,662.05; R. 2, 7, 132, 143, 175), exceeds $25,000; and the case also involves the construction and applicability of statutes of the United States, particularly the National Bank Act and its taxing section 41 (now R.S. 5219 as amended), and Section 25 of the Federal Reserve Act as amended, as well as those sections of the Organic Act for the Philippine Islands conferring general legislative and taxing powers on the Philippine government, and other related statutes concerning

the status of the Philippine government and the extension of United States statutory laws to the Islands.

## SUMMARY OF ARGUMENT

1. This case differs sharply from the Puerto Rican case of *Manuel V. Domenech, Treasurer of Puerto Rico* v. *National City Bank,* 294 U. S. 199, decided February 4, last, in that the statutory laws of the United States do not run generally to the Philippine Islands, as they do to Puerto Rico. The National Bank Act, including its taxing section 41, now R. S. 5219 as amended, is in force in Puerto Rico because by the Organic Act for that Island the Congress directed that the statutory laws of the United States not locally inapplicable should run there. But from the earliest days the policy of the Congress as to the Philippines has been directly to the contrary. The Foraker Act of 1902, the first Organic Act, directed that the section of the Revised Statutes, Sec. 1891, extending the statutory laws of the United States to the Territories generally *should not be in effect in the Philippines;* and that was followed up by the "Jones Law" of August 29, 1916, the present Organic Act, which after declaring in its preamble the purpose of the people of the United States to withdraw their sovereignty from the Philippine Islands and to recognize their independence as soon as a stable government could be established, reciting that for that purpose it was necessary to place in the hands of the Philippine peoples as large a control over their domestic affairs as was practicable without impairing the sovereignty of the United States, directed, in Section 5 of the Act, that "the statutory laws of the United States hereafter enacted shall not apply to the Philippine Islands, except when they specifically so provide, or it is so provided in this Act". The National Bank Act has never been extended to the Philippine Islands, and is not in force there; and hence the limitations upon the taxing powers of States in relation to national

banks contained in its taxing Section 41, now R. S. 5219, are not in force there, and do not in any way affect the general taxing powers of the Philippine Government with relation to banks doing business in the Islands, whether branches of national banks of the United States or foreign banks or domestic banks of the Islands.

2. The general legislative powers, including the taxing powers, reposed in the Philippine Legislature by the Organic Act, subject to the command of the Congress in Section 3 of that Act, "*That the rule of taxation in said islands shall be uniform*", apply alike to all banks and other financial institutions and corporations doing business in those Islands. There is no exception or exemption with relation to branches of national banks. Nor can it properly be presumed that the Congress intended such branches to be exempted from taxation as "instrumentalities of the United States". Since there is no express exemption by any Act of Congress, and since the taxing section (R. S. 5219 as amended) of the National Bank Act has not been extended to the Islands, any such a presumption, if it were to be indulged, would exempt branches of national banks, not only from the insular "capital taxes" and "deposits taxes" here in question, *but also from all other insular taxation*,— the real estate tax, and the income tax, equally with the taxes here in question; since, outside of the taxing section of the National Bank Act which does not run to the Islands, there is no ground for maintaining any distinction whatever between the different classes of taxes levied by insular legislation. The rule that a "dependency may not tax its sovereign" is qualified by the *proviso* that it may do so with the sovereign's consent; so that the whole question is really whether or not the Congress has impliedly given its consent. The presumption that the Congress does not intend that an agency or an instrumentality of the United States may be taxed by the subordinate government of a

Territory or of a dependency applies with but limited force in the case of a bank; which is primarily a corporation for profit and is only secondarily or in a limited sense an agency of the federal government in some of its fiscal operations. The Congress has established a separate coinage and currency system for the Philippine Islands, as well as separate tariff and immigration laws. It has authorized the insular Legislature to guarantee the income of the insular Agricultural Bank, afterwards merged into the Philippine National Bank, a truly national bank for the Islands, an arm of the insular government in a much more effective sense than are United States "national banks". It has not extended the National Bank Act, nor its taxing section, to the Islands; and it has granted the insular Legislature general legislative and taxing powers, and has declared without qualification that "the rule of taxation in the islands shall be uniform". It has not expressly exempted the Philippine branches of national banks of the United States from that rule of uniformity; nor even expressly extended to the Islands the provision of Section 25 of the Federal Reserve Act authorizing the establishment of branches of national banks in dependencies and insular possessions of the United States. The present insular legislation, under which the taxes here in question were levied, was in force in the Islands in almost exactly the same identical form as at present, in Sections 1654 and 1657 of the former Administrative Code of the Islands (Act No. 2657, approved February 24, 1916) when the Congress adopted the present Organic Act of August 29, 1916, and by Section 6 of that Act expressly continued "the laws now in force in the Philippines", "in force and effect, except as altered, amended, or modified herein", without making any exception of those bank tax sections of the Administrative Code. And they have been in force in the Islands ever since. In view of these facts and of the fact,—of which the Congress must be presumed

to have been aware;—that, in the absence of any extension to the Islands of the taxing section of the National Bank Act, Philippine branches of United States national banks *cannot be taxed at all by the insular government by any form of taxation* and will, therefore, enjoy such a business advantage as practically to give them a banking monopoly in the Islands, *unless the Congress intended to extend the insular government's general taxing powers to them* regardless of whether they may sometimes be employed as "instrumentalities of the Federal government" for some fiscal purposes,—it is not to be presumed that the Congress intended to stretch a presumption to any such length; but on the contrary that it intended the insular government's general taxing powers to extend to those branch banks.

3. As already noted, the Congress by Section 6 of the Organic Act of August 29, 1916, expressly recognized and continued in force the laws then in force in the islands. This ratification included Sections 1654 and 1657 of the former Administrative Code then in force, and since re-enacted in substantially identical form, under which the taxes here in question were levied. That ratification was of course within the powers of the Congress.

4. Since Section 25 of the Federal Reserve Act, authorizing the Federal Reserve Board to permit the establishment of branches of national banks in foreign countries and in "dependencies and insular possessions" of the United States, does not expressly mention the Philippine Islands, and has never been expressly extended to those Islands, it is not in force there, any more than is the taxing section of the National Bank Act or any other part of the National Bank Act. It follows that the attempted license from the Federal Reserve Board to the National City Bank to establish branches in Manila and in Cebu in those Islands, offered in evidence by the bank here (R. 42-43), is wholly void, of no effect whatever, and gives no authority for the establishment or existence of these branches in the Philippine

Islands. Whatever else these so-called "branches" of the National City Bank in the Philippine Islands may really be,— if there is any legal authority whatever for their existence at all,— they are not really branches of the National City Bank of New York under Section 25 of the Federal Reserve Act or any other Act of the United States. They owe their existence in the Philippine Islands, and their continued tolerance there, wholly to Philippine law. Whether they are to be looked upon as foreign banks within the Islands, or as *de facto* domestic banks of the Islands, existing and carrying on business under Philippine law,— in any event they are not, in any proper sense, "branches" of a national bank of the United States existing under any license of the Federal Reserve Board; since the Board has no power,— and never has had any power,— to license a branch bank in the Philippine Islands. The only power of the Board to license a branch of a national bank to be located outside of the continental United States,— or for any such branch to be organized or to exist or to carry on business under any law of the United States,—is Section 25 of the Federal Reserve Act as amended, which does not authorize such a branch in the Philippine Islands, because the Act does not expressly mention those Islands, and it has never been extended there.

5. It follows that there is no federal limitation whatever preventing the insular government from levying the taxes here in question upon these so-called Philippine "branches" of the National City Bank of New York; that the taxes are valid; and that the judgments of the Supreme Court of the Philippine Islands and of the Court of First Instance of Manila should be reversed, and this case remanded with directions to dismiss the action at plaintiff's costs.

## ARGUMENT

### POINT I

**Neither the taxing section of the National Bank Act nor any**

**other part of that Act, nor Section 25 of the Federal Reserve Act, runs to the Philippine Islands.**

A.—This case differs sharply from the Puerto Rican case of *Manuel V. Domenech, Treasurer of Puerto Rico* v. *The National City Bank of New York,* 294 U. S. 199, recently decided by this court. The statutory laws of the United States not locally inapplicable run generally to Puerto Rico, by virtue of the provisions of Section 9 of the Organic Act for Puerto Rico,[5] including the National Bank Act with its taxing Section 41, now R. S. 5219 as amended, and the Federal Reserve Act including its Section 25 authorizing the Federal Reserve Board to license branches of United States national banks to be established in foreign countries and in "dependencies or insular possessions of the United States" and therein "to act if required to do so, as fiscal agents of the United States" (*Domenech* v. *National City Bank, supra,* 294 U. S. 199, 204, 205). But directly to the contrary, **the statutory laws of the United States do not run generally to the Philippine Islands.**[6]

The policy of the Congress with relation to the Philippine Islands has, from the beginning, differed sharply from that with relation to Puerto Rico as well as from that with relation to Hawaii and the former Territories here in the mainland United States which it was always understood were on their way to ultimate Statehood. From the beginning it has apparently been the policy of the Congress to prepare the Philippine Islands for ultimate independence from the United States; and its legislation with respect to them has differed accordingly from that with respect to

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[5] Act of March 2, 1917, c. 145, 39 Stat. 952, 954; 48 U. S. Code 734.

[6] Philippine Organic Act of August 29, 1916, c. 416, Section 5, 39 Stat. 545, 547; 48 U. S. Code 1003. Former Organic Act for the Philippines, "Foraker Act", Act of July 1, 1902, c. 1369, Section 1, 32 Stat. 691; *infra,* Appendix I, pp. 47, 48.

Puerto Rico and the Territories. Accordingly, in harmony with that general policy of differentiating the status of the Philippine Islands, the original Organic Act for those Islands, the "Foraker Act" of July 1, 1902, omitted the provision usually found in Territorial organic Acts,—and which was incorporated in substance in the original Organic Act for Puerto Rico,[7] as well as in the present Organic Act for that island.[8] But in dealing with the Philippine Islands the Congress provided, directly to the contrary, in the first Organic Act, the Philippine "Foraker Act" of July 1, 1902, c. 1369, Section 1, 32 Stat. 691, that Section 1891 of the Revised Statutes should not be in force in those Islands,[9] and followed that up by providing in Section 5 of the present Organic Act, the "Jones Law" of August 29, 1916, c. 416, 39 Stat. 545, 547:

> "That the statutory laws of the United States hereafter enacted shall not apply to the Philippine Islands, except when they specifically so provide, or it is so provided in this Act."

The Philippines, of course, like all other territories belonging to the United States, are subject to the plenary power of the Congress under Clause 2 of Section 3 of Article IV of the Constitution, to:

> "make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States";

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[7] "Foraker Act for Puerto Rico", Act of April 12, 1900, c. 191, Sec. 14, 31 Stat. 77, 80, *supra.*

[8] Act of March 2, 1917, c. 145, Sec. 9, 39 Stat. 951, 954; 48 U. S. Code 734, *supra.*

[9] Section 1891 of the Revised Statutes is the section providing generally that the Constitution and laws of the United States shall be in force in every organized Territory; *infra,* p. 15; and Appendix I, p. 47.

but the Constitution is self-executing in them only insofar as it protects the fundamental rights of free men. *Balzac* v. *Porto Rico*, 258 U. S. 298, 305, 312-313, accepting as "the settled law of the court" the doctrine of the separate concurring opinion of WHITE, J., in *Downes* v. *Bidwell*, 182 U. S. 244, 290-291. With that limitation saving the fundamental rights of free men, the Congress may in its discretion adopt for any territory belonging to the United States such laws and "Rules and Regulations" as it may deem fit; **and may or may not, as it shall determine to be best from time to time, extend to any territory the operation of any statute or law of the United States.**

**B.—From the beginning of the government, the Congress has freely exercised this power.**

The former Territories within the continental United States which have since been erected into States, were from the first generally understood to be destined for Statehood. Hence it early became the habit of the Congress to provide in their Organic Acts that all of the laws of the United States not locally inapplicable should be in force within the Territory; although, in the very beginning, it did not do so, but, instead, inserted in the Organic Act a list of those of its Acts which should be in force within the particular Territory.[10] Examples are Section 7 of the Act establishing the Territory of Orleans, now the State of Louisiana, Act of March 26, 1804, c. 38, 2 Stat. 283, 285, and Section 9 of the Organic Act of Florida, Act of March 30, 1822, c. 13, 3 Stat. 654, 657 (Appendix II, *infra*, pp. 66-68); but in the Florida Act there was added,

[10] A resumé is in Appendix II of the action of the Congress in the various Territorial Organic Acts prior to the time when Puerto Rico and the Philippines came to the United States by the Spanish War, with reference to extending particular Acts of Congress, or the statutory laws of the United States generally, to the various Territories (*infra*, pp. 66-70).

at the end of the list, a general clause, — "*and all other Public Laws of the United States, which are not repugnant to the provisions of this Act*" (3 Stat. *supra*, at p. 658); and in the Organic Act for Wisconsin it was broadly declared that "the laws of the United States are hereby extended over, and shall be in force in, said Territory, so far as the same, or any provisions thereof, may be applicable" (Act of April 20, 1836, c. 54, Sec. 12, 5 Stat. 10, 15; Appendix II, *infra*, p. 68). Such a general extension continued thereafter to be the habit, and was embodied in the "Provisions Common to all the Territories" in Title XXIII of the Revised Statutes of 1873, as Section 1891, reading:

> "The Constitution and all laws of the United States which are not locally inapplicable shall have the same force and effect within all the organized Territories and in every Territory hereafter organized as elsewhere within the United States."

That section was republished without change in the 1878 edition of the Revised Statutes (*infra*, Appendix I, p. 47). Its effect was to incorporate all of the organized Territories into the Union. It was based upon the general understanding that all of the Territories were destined for Statehood; and it was in force at the outbreak of the Spanish American War, and when by the treaty of peace at its conclusion Puerto Rico and the Philippines were ceded to the United States, and when, at about the same time, Hawaii was annexed.

**C.—But, as above pointed out, in dealing with the new Territories thus acquired outside of the limits of the continental United States, the Congress from the outset made a sharp differentiation between the Philippine Islands on the one hand, and the other newly acquired territories on the other hand,** in relation to extending to them the laws of the United States, and in relation to the apparent purpose

of the Congress concerning their ultimate destiny. To Hawaii it extended Section 1891 of the Revised Statutes in full force, thereby extending to that Territory not only the laws of Congress but also the Constitution in its full force, and thereby definitely "incorporating" Hawaii into the Union. (Organic Act for Hawaii, Act of April 30, 1900, c. 339, Sec. 4, 39 Stat. 141; *Hawaii* v. *Mankichi*, 190 U. S. 197, 211, 220). And likewise as to Puerto Rico, while the Constitution in its full force was not extended to that Island,—and Puerto Rico is, therefore, not "incorporated" into the Union (*Balzac* v. *Porto Rico*, *supra*, 258 U. S. 298, 305-314),—yet as above pointed out, by the first Organic Act for that Island, the "Foraker Act" of April 12, 1900, c. 191, Sec. 14, 31 Stat. 77, 80, it was provided:

> "That the statutory laws of the United States not locally inapplicable, except as hereinbefore or hereinafter otherwise provided, shall have the same force and effect in Porto Rico as in the United States, except the internal revenue laws";

and afterward by the present Organic Act for that Island, the Act of March 2, 1917, c. 145, Sec. 9, 39 Stat. 951, 954 (*infra*, Appendix V, p. 87) that provision was reenacted and continued in force, and further by Section 5 of that Act (39 Stat. at p. 953; Appendix V, *infra*, pp. 86-87), United States citizenship was extended to the citizens of Puerto Rico.

**D.—But as to the Philippine Islands**, directly to the contrary, the Congress provided by the first Organic Act for those islands, as already pointed out (Act of July 1, 1902, c. 1369, Sec. 1, 32 Stat. 691, 692; *infra*, Appendix I, p. 47) that:

> "The provisions of Section 1891 of the Revised Statutes of 1878 *shall not apply* to the Philippine Islands" (*italics supplied*);

and followed that up fourteen years later by the provision of Section 5 in the present Organic Act of August 29, 1916

(*infra*, Appendix I, p. 48), expressly directing that the statutory laws of the United States enacted after that date "*shall not apply to the Philippine Islands, except when they specifically so provide, or it is so provided in this Act*". And in the meantime, the Congress, instead of extending the United States tariff laws to the Philippine Islands, had by the Act of August 5, 1909, c. 8, 36 Stat. 130 (Appendix I, *infra*, p. 54), created a separate tariff system for those Islands; and by Section 10 of the present Organic Act of August 29, 1916 (Appendix I, *infra*, pp. 48-49), it granted to the Philippine Legislature power, with the approval of the President, to modify the tariff laws for the Islands at any time and to adopt new tariffs for themselves; and likewise the authority, with the approval of the President, to modify the immigration laws and the currency and coinage laws of the Islands (39 Stat. at p. 548; *infra*, Appendix I, *ib.*, p. 49). And the Congress gave the Philippine Islands their own separate monetary unit, the peso instead of the dollar, and their own separate coinage and currency system ("Foraker Act", *supra*, Secs. 76-79; Act of March 2, 1903, as amended; Appendix I, *infra*, pp. 50-51). And in framing the judicial system for the Philippines, no United States courts were instituted, and no United States Attorney. In Puerto Rico, as in the Territories, there is a United States District Court and a United States District Attorney under the supervision of the Attorney General of the United States (Organic Act for Puerto Rico, Sec. 41, c. 145, 39 Stat. 951, 965); and in Hawaii there is likewise a District Court which the Congress has recognized as "the United States District Court for Hawaii" (Organic Act for Hawaii, Act of April 30, 1900, c. 339, Sec. 86, 31 Stat. 141, 158; and Par. "Second", Sec. 128(a) of the Judicial Code as amended by the Jurisdiction Act of February 13, 1925, c. 229, 43 Stat. 936). But in the Philippines there is no United States District Court, nor anything corresponding to it, and no United States District

Attorney. There is in those Islands but the one system of insular courts,— the local municipal courts, the Courts of First Instance, and the insular Supreme Court (Organic Act for the Philippine Islands, Act of August 29, 1916, c. 416, Secs. 26 and 27, 39 Stat. 545, 555).

And the customs service in the Philippine Islands is not under the jurisdiction of the Secretary of the Treasury. The insular collector of customs is, and from the beginning has been, an official of the insular government. (Tariff Act for the Philippine Islands, *supra*, Act of August 5, 1909, c. 8, Sec. 25, 36 Stat. 130, 177; *Wright, Auditor*, v. *Ynchausti*, 272 U. S. 640, 646-651).

**E.—Philippine Islands.—Laws relating to revenue and taxation.** And so also, as to the Philippine Islands, the distinctive purpose of the Congress was emphasized by the insertion of the *unusual second paragraph* in section 7 of the present Philippine Organic Act of August 29, 1916, (39 Stat. 545, 547; 48 U. S. Code 1005; Appendix I, *infra*, p. 48) by which, after giving the Legislature power "when not inconsistent with this Act, by due enactment" to "amend, alter, modify or repeal, any law, civil or criminal, continued in force by this Act as it may from time to time see fit", it is further expressly provided that:

> "*This power shall specifically extend,* with the limitation herein provided as to the tariff, *to all laws relating to revenue and taxation in effect in the Philippines.*"

That is a most unusual provision in a territorial organic act. No such power is given the Puerto Rican Legislature. The corresponding section of the Puerto Rican Organic Act is section 57 of that Act ("Jones Law" for Puerto Rico, Act of March 2, 1917, c. 145, 39 Stat. 951, 968; 48 U. S. Code 735) containing almost word for word the same power granted the Philippine Legislature by the first paragraph of section 7 of the Philippine Act, "by due en-

actment to amend, alter, modify, or repeal, any law or ordinance, civil or criminal, continued in force by this Act as it may from time to time see fit", *but without any such power as that given the Philippine Legislature by the second paragraph of section 7 of the Philippine Act* "specifically" extending that Legislature's power over *"all laws relating to revenue and taxation in effect in the Philippines"*.

The omission of that clause from the Puerto Rican Act is very significant. The Philippine Act was approved August 29, 1916. The Puerto Rican Act was passed at the next following "short session" of the same Congress, and approved March 2, 1917. Both acts were introduced by Representative William A. Jones, chairman of the House Insular Affairs Committee, and both are popularly known by his name, the "Jones Law" for the Philippines, and the "Jones Law" for Puerto Rico, respectively.

**Thus this broad extension of the powers granted to the Philippine Legislature by the express provision of this second paragraph of section 7 of the Philippine Act to amend or repeal "all laws relating to revenue and taxation in effect in the Philippines", was deliberately omitted from the powers given the Puerto Rican Legislature. That emphasizes the Congressional intention to leave the Philippines free to frame their own systems of revenue and taxation.** In view of this provision of section 7 of the Philippine Organic Act, it seems plain that, even if the taxing section of the National Bank Act had ever gone into effect in the Philippines, then, being a "law relating to * * * taxation", it would have been subject to this express provision granting the Philippine Legislature the power to amend or repeal it; which was exercised by the contrary provisions of sections 1499 and 1502 of the Philippine Administrative Code of 1917 (Appendix I, *infra*, pp. 63-64) for taxing all banks in the Islands uniformly, under which the taxes here in question were levied.

**F.—The underlying reason for all these differences that the Congress has thus consistently maintained between the**

**Philippine Islands on the one hand and the other Territories and territorial governments on the other, is plain from the preamble to the present Organic Act for those Islands** ("Jones Law", Act of August 29, 1916, c. 416, 39 Stat. 545; *infra,* Appendix I, pp. 47-48) declaring,

> **"Whereas, it is, as it always has been, the purpose of the United States to withdraw their sovereignty over the Philippine Islands, and to recognize their independence as soon as a stable government can be established therein";**

and is emphasized both by the earlier resolution of the Senate when advising the ratification of the Treaty with Spain back in February, 1899 (*infra,* Appendix V, pp. 84-85), and by the recent Act offering independence to the Philippines (Act of March 24, 1934, c. 84, 48 Stat. 456; *infra,* Appendix V, p. 90), which has now been accepted by the Philippine Legislature and also by the Philippine people themselves at their recent plebiscite adopting the new Constitution for the Philippine Commonwealth,[11] so that the Philippine Islands are now on their way out from the jurisdiction of the United States and toward their own independent sovereignty.

**G.—The provision in Section 1 of the "Foraker Act" of July 1, 1902, the former Organic Act for the Philippine Islands, that:**

> "The provisions of Section 1891 of the Revised Statutes of 1878 shall not apply to the Philippine Islands,"

**is in reality an affirmative declaration by the Congress of its will that the general statutory laws of the United States shall not run to the Philippine Islands.**

Section 1891 of the Revised Statutes (*infra,* Appendix I, p. 47) is, as above noted (*ante,* p. 15), the section of the

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[11] The new Commonwealth Government is to be formally inaugurated at Manila on November 15, 1935.

Revised Statutes of 1873 and of 1878 which extends the statutory laws of the United States, generally, to the organized Territories. The express direction of the Congress contained in Section 1 of the "Foraker Act" of 1902 for the Philippines, that Section 1891 of the Revised Statutes should not run to the Philippine Islands, was, therefore, in reality *a direct affirmative expression of the Congressional will that the general statutory laws of the United States,* which run throughout the Union, and which, by Section 1891 of the Revised Statutes, likewise run generally to all the organized Territories, **should not run to the Philippine Islands.** This was the interpretation put upon that provision of the "Foraker Act" by the Attorney General, in his opinion holding that the Narcotic Drugs Act does not run to the Philippine Islands, in which he said:

> "* * * the provisions of Section 1 of the Act of July 1, 1902 (32 Stat. 691), in which Congress specifically withheld from the Philippine Islands the application of Section 1891 of the Revised Statutes, *thus expressing its intention that the laws of the United States should not apply to the Philippines unless the intention to that effect was clearly expressed."* (34 Ops. Atty. Gen. 550, 552-553, *re* Narcotic Drugs Act; *quoted more at length, infra,* pp. 25-26; *italics supplied*).

**That is in direct antithesis to** the contrary provision in the "Foraker Act" for Puerto Rico of April 12, 1900, that the laws of the United States not locally inapplicable *shall* run to that Island (c. 191, Sec. 14, 31 Stat. 77, 80; Appendix V, *infra,* p. 85). While this provision of the Philippine "Foraker Act" is in negative form, and is not expressed in as positive language as was afterwards done in Section 5 of the present Organic Act for those Islands, yet it expresses the same intention, that the statutory laws of the United States shall not, generally, run to those Islands; particularly when taken in connection with the fact that the Congress, in relation to the Philippine Islands, reverted

to its habit of the early days of the 19th Century (*ante*, Point I-B, pp. 14-15) of directing specifically which statutes should run to those Islands (*infra*, pp. 22-23, paragraph "H" of this Point; and Appendix IV, *infra*, pp. 80-83),—*with the clear implication that other statutes should not run there.*

The National Bank Act was a "law of the United States," in existence when the Philippine "Foraker Act" was passed in 1902. The Congress did not choose to direct that it should run there. It follows that it never did take effect in those Islands; and is not in force there. *And it is particularly noteworthy* that the only amendments to the taxing section of the National Bank Act (Sec. 41; R. S. 5219) enacted since the date of the Philippine "Foraker Act" of 1902, were enacted in 1923 and in 1926 respectively (Acts of March 4, 1923, 42 Stat. 1499; and March 25, 1926, 44 Stat. 223; Appendix I, *infra*, pp. 57-58), *both passed after the present Philippine Organic Act* of August 29, 1916, and neither of them specifically mentioning the Philippine Islands; *and that no amendment of the National Bank Act has ever specifically mentioned those Islands, or extended the Act there; thus again emphasizing the intention of the Congress that the National Bank Act should not run to those Islands.*

**H.—Whenever the Congress has desired a statute of the United States to extend to the Philippine Islands, it has been its uniform policy specifically to direct that the particular statute shall run to and be in force in those Islands.** Thus for example by Section 76 of the "Foraker Act" of July 1, 1902, it expressly extended "the laws of the United States relating to mints and coinage, so far as applicable", "to the coinage of said Islands" (39 Stat. at p. 710; Appendix I, *Infra*, p. 50); and by the Act of February 6, 1905, c. 454, 33 Stat. 698, the Congress directed that the provisions of Sections 5270 to 5277 of the Revised Statutes relating to extradition, "so far as applicable, shall apply to

the Philippine Islands"; and, again, by the Act of June 15, 1917, enacted during the war, that certain sections of the neutrality laws of the United States should be extended to the Philippine Islands (Act of June 15, 1917, c. 30, Title XIII, Sec. 2, 40 Stat. 217).[12] **But the Congress has never enacted any statute broadly extending the laws of the United States generally to the Islands in any way**, and, as illustrative of its policy toward the Islands, it has not usually included them in the recent emergency reconstruction and relief Acts passed during the past few years, although some of the provisions of a few of those Acts have been expressly extended to the Islands. Thus, for example, when the Congress determined to extend to the Philippine Islands the 15% cut in the salaries of insular officials appointed by the President, it specifically named those Islands in the Act, directing (Independent Offices Act of June 16, 1933, c. 101, Sec. 12, 48 Stat. 283, 307):

> "Sec. 12. From the date of the approval of this Act and until July 1, 1934, the compensation of all officers and employees of the insular possessions of the United States, *including the Philippine Islands*, which is now fixed by Acts of Congress * * *, is hereby reduced fifteen per centum:" (*Italics supplied*).

**I.—In view of this established purpose of the Congress thus manifested** (1) by its express direction in Section 5 of the present Organic Act for the Islands (*infra*, Appendix I, p. 48), that the statutory laws of the United States thereafter enacted shall not apply to the Philippines, except when they specifically so provide, "or it is so provided in this Act", (2) by its direction in Section 1 of the former

[12] Appendix I, *infra*, p. 52. And see also, as further illustrations, the various Acts cited by the Attorney General in his opinion relative to the Narcotic Drugs Act (quoted *infra*, pp. 25-26); and the collation in Appendix IV, *infra*, pp. 80-83), of examples of Acts specifically directed by the Congress to be in force in the Philippine Islands.

Organic Act of 1902 ("Foraker Act", *infra*, Appendix I, p. 47) that the section of the Revised Statutes, Sec. 1891, extending the laws of the United States to the Territories generally should not be in force in the Philippine Islands, and (3) by the practice of the Congress itself expressly to extend to those Islands by name or specific designation any federal statute which it desires to put into force there, **the Attorney General of the United States, in consonance with the established practice of most of the executive departments of the federal government, has uniformly held that federal statutes, which do not specifically name the Philippine Islands, do not extend to those Islands, even though they do contain general language extending them to the "insular possessions" or to "places" or "territories under the jurisdiction of the United States", so long as they fail specifically to name the Philippine Islands.** Thus, for example, the Attorney General has held that the Narcotic Drugs Act of May 26, 1922, c. 202, 42 Stat. 596, does not extend to the Philippine Islands, although Section 2(b) of that Act provides broadly:

> "That it is unlawful to import or bring any narcotic drugs into the United States *or any territory under its control or jurisdiction*" (*Italics supplied*);

and that the National Prohibition Act, the *Volstead Act* of October 28, 1919, c. 85, 41 Stat. 305, 307 *et seq.*, did not run to the Philippine Islands, for similar reasons, broad as its general language was; and, quite recently, that the National Industrial Recovery Act of June 16, 1933, c. 90, 48 Stat. 195, did not extend to the Philippine Islands, in spite of the broad language in Section 7(d) of that Act covering "the District of Columbia or any Territory of the United States", and "*any insular possession* or other place under the jurisdiction of the United States". (NARCOTIC DRUGS ACT, 34 Ops. Atty. Gen. 550, 551-553, October 17, 1925; NATIONAL PROHIBITION ACT, 32 Ops. Atty. Gen. 258, 259, June

24, 1920; NATIONAL INDUSTRIAL RECOVERY (39 Ops. Atty. Gen., Advance Sheets, Dec. 2, 1933).

In his opinion with reference to the Narcotic Drugs Act, holding that it does not run to the Philippine Islands, the Attorney General, after quoting the language of Section 2(b) of the Act,

> "That it is unlawful to import or bring any narcotic drug into the United States *or any territory under its control or jurisdiction*" (c. 202 Sec. 2(b), 42 Stat. 596; *italics supplied*),

said (34 Ops. Atty. Gen. 550, 551-553, *supra*):

> "While ordinarily such language might be construed as embracing the United States and all of its possessions, such interpretation is not permissible when the language is measured by the test laid down in the Act of August 29, 1916, above set forth. The Narcotic Drugs Import and Export Act will be searched in vain for any language disclosing that it 'specifically' provides that it shall apply to the Philippines. * * *
>
> "ADDITIONAL SUPPORT FOR THE VIEWS ABOVE EXPRESSED IS TO BE FOUND IN WHAT MAY NOW BE REGARDED AS THE WELL SETTLED MANNER IN WHICH CONGRESS EXPRESSES ITS INTENTION WHEN IT DESIRES ANY OF THE FEDERAL LAWS TO BE OPERATIVE IN THE PHILIPPINES. In section 23 of the Income Tax Act of September 8, 1916 (39 Stat. 776), it is provided that 'the provisions of that Act shall extend to the Philippine Islands'. The Act also confers jurisdiction upon 'courts of the first instance of said Islands', and places the administration of the law so far as the Act is concerned upon the officers of these Islands. The so-called National Defense Act of June 15, 1917 (40 Stat. 217, 231), specifically confers upon the 'courts of first instance in the Philippine Islands' jurisdiction of the offenses under that Act committed within the Philippines. That Act also provides that the District Attorneys of the Philippine Islands 'shall have the powers and perform the duties provided in this Act for United States Attorneys.' In section 2 of the Narcotic Act of December 17, 1914 (38 Stat. 785,

787), is it provided that in 'the Philippine Islands administration of this Act' shall be looked after by the local internal revenue officers. The Act further provides that 'the courts of first instance in the Philippine Islands shall possess and exercise jurisdiction in all cases arising under this Act in said Islands'. In the Immigration Act of February 5, 1917 (39 Stat. 874), it is provided that 'this Act shall be enforced in the Philippine Islands by officers of the general government thereof.' In the Trading with the Enemy Act of October 6, 1917 (40 Stat. 411, 425), it is provided that the several courts of first instance in the Philippine Islands shall have jurisdiction of offenses committed under the Act within their territory. These several illustrations, considered in the light of restrictive provisions of Section 5 of the Act of August 29, 1916, *supra,* seem to forbid the extension of the Narcotic Drugs Import and Export Act to the Philippines. Also pertinent is the opinion of my predecessor (32 Ops. 258), holding that section 5 of the Act of August 29, 1916, *supra,* prevented the operation of the liquor laws of the United States in the Philippines, although those laws otherwise might fairly have been interpreted to apply to such Islands.

"In conclusion, it seems proper to state that even though the correct interpretation of the Narcotic Drugs Import and Export Act were more doubtful than I find it to be, it would nevertheless be necessary to resolve that doubt against the application of the law to the Philippines **in view not only of the provisions of section 5 of the Act of August 29, 1916, supra, but also because of the provisions in section 1 of the Act of July 1, 1902 (32 Stat. 691), in which Congress specifically withheld from the Philippine Islands the application of section 1891 of the Revised Statutes, thus expressing its intention that the laws of the United States should not apply to the Philippines unless the intention to that effect was clearly expressed.** It may also be added that there appears to be nothing in the legislative history of the Narcotic Drugs Import and Export Act which discloses any specific intention that said laws should apply in the Philippines."

Since the Congress has never seen fit to extend either the National Bank Act or the Federal Reserve Act, nor any part of either of those Acts, to the Philippine Islands, it follows that neither of those Acts is or ever has been in force there. And of course, *a fortiori*, that neither Section 41 of the National Bank Act, its taxing Section (now R. S. 5219 as amended), nor Section 25 of the Federal Reserve Act authorizing the establishment of branches of national banks in "dependencies or insular possessions of the United States" by permission of the Federal Reserve Board, is in force in those Islands, or ever has been.

**J.—Neither the taxing section of the National Bank Act nor any other part of that Act has ever been extended to the Philippine Islands.**

The Act was in effect in the United States long before the American occupation of the Islands. It was originally enacted in 1864, and was carried into Section 5219 of the Revised Statutes in 1873 (*ante*, p. 15). It extended to the organized and "incorporated" Territories of the United States, both by virtue of Section 1891 of the Revised Statutes and also because by Section 6 of the Act itself the Congress indicated its intention that a national bank might be organized in any "territory" or in a "district" (The District of Columbia), as well as in any "state". *Talbott* v. *Silver Bow County Commissioners*, 139 U. S. 428, 443-444, decided March 30, 1891, before there were any insular possessions.[13]

This taxing section, Section 41 of the original Act of

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[13] Where this court, speaking by Mr. JUSTICE BREWER, said:

> "Further, it is a general rule in the construction of statutes that when in the earlier and declaratory section the scope and extent of the power and privileges granted are once stated, the character of the grant as thus disclosed controls and interprets all subsequent sections; and it is unnecessary in each subsequent sec-

June 3, 1864, carried into Section 5219 of the Revised Statutes, has been amended twice. *Both of those amendments have been made since the enactment of the present Organic Act for the Philippine Islands.* One of them was by the Act of March 4, 1923, c. 267, 42 Stat. 1499, and the other by the Act of March 25, 1926, c. 88, 44 Stat. 223 (*ante*, p. 22; Appendix I, *infra*, pp. 57-58. *In neither of those amendments were the Philippine Islands specifically mentioned.* And, consequently, the Act as it now stands does not specifically mention those Islands (*infra*, pp. 57-58). It clearly follows that it has never been the intention of the Congress to extend that statute to those Islands.

**K.—Neither Section 25 of the Federal Reserve Act, nor any other part of that Act, has ever been extended to the Philippine Islands.** As to the Federal Reserve Act, including particularly its Section 25 authorizing the Federal Reserve Board to approve applications of national banks of the United States to establish so-called "foreign branches" outside of the States and Territories and the District of Columbia, — that Act was first passed on December 23, 1913 (c. 6. 38 Stat. 251, 273, Appendix I, *infra*, pp. 58-59), and Section 25 as then enacted simply authorized the Federal Reserve Board to approve the application of any national banking association possessing a capital and surplus of $1,000,000 or more *"to establish branches in foreign countries or dependen-*

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tion to restate or use words and expressions which shall fully disclose the extent of those powers and privileges; * * *. So, when, in the sections providing for the incorporation of national banks, the thought of their existence in States and Territories alike is affirmed, the character and extent of the banking system are disclosed; and subsequent sections must be taken to be in support, rather than in derogation, of the national feature of this national system."

*But the Congress has never extended this "national system" to the Philippines.*

*cies of the United States''*. There was no specific reference to the Philippine Islands. **But the significant thing is that only nine days after the enactment of the "Jones Law", the present Organic Act for the Philippine Islands** of August 29, 1916, with its Section 5, specifically prescribing as above quoted, *''That the statutory laws of the United States hereafter enacted shall not apply to the Philippine Islands, except when they specifically so provide, or it is so provided in this Act''* (39 Stat. 545, 547; *infra*, Appendix I, p. 48), THE CONGRESS AMENDED SECTION 25 OF THE FEDERAL RESERVE ACT on September 7, 1916,[14] by **inserting** the words **"or insular possessions"** after the word "dependencies", *and made no other change in the phraseology of that section of the Federal Reserve Act*. **And made no reference to the Philippine Islands.**

*This action of the Congress, in making that amendment in that way, only nine days after the enactment of the new Organic Act for the Philippine Islands, without mentioning the Philippine Islands in the amendment, seems to be the very plainest kind of an expression of its will by the Congress not to extend that section of the Federal Reserve Act to those Islands.*

Plainly, had it been its will that that section of the Federal Reserve Act should run there, it surely would have expressly mentioned the Philippine Islands when amending the section only nine days after so definitely laying down the rule in Section 5 of the new Organic Act for the Islands on August 29, 1916, that no law thereafter enacted should run to those Islands, unless it specifically so declared;—instead of thus amending Section 25 only nine days later, and saying merely *''insular possessions''* and *''dependencies''*, as it did.[15] And again, when three years

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[14] Act of September 7, 1916, c. 461, 39 Stat. 752, 755; Appendix I, *infra*, p. 59.

[15] And that necessary conclusion is still further rein-

afterwards it once more amended Section 25 of the Federal Reserve Act, by Section 2 of the Act of September 17, 1919 (c. 60, 41 Stat. 285, 286; 12 U. S. Code, 601; Appendix I, *infra*, pp. 59-60), it still retained the same phraseology "*in foreign countries or dependencies or insular possessions of the United States*", **and once more saw fit not specifically to mention the Philippine Islands, and not specifically to extend the Act to those Islands.**

*The conclusion is irresistible that it was the deliberate intent of the Congress not to extend the Federal Reserve Act to those Islands.* This conclusion is again reinforced when it is borne in mind: (1) That, as above pointed out, the Congress had theretofore authorized the Philippine government to guarantee the income of the Philippine Agricultural Bank, afterwards merged into the Philippine National Bank, owned and directly controlled by the Philippine Government, a truly national bank for the Islands, Appendices I and III, *infra*, pp. 52-53 and 72; (2) That the Congress must be presumed to have been aware of the existence of the Philippine National Bank and that it was practically a branch of the insular government (Philippine Acts 2612, 2747, 2938, Appendix III, *infra*, pp. 71-79, and cognate Acts); and (3) That, administratively, the Federal Reserve Act was apparently regarded, at least for a long time, as not authorizing branches of national banks in the Islands. At any rate it does not appear that the Federal Reserve Board ever licensed any branches of national banks

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forced by the fact that, on the very next following day, September 8, 1916, the Congress actually did specifically direct, in Section 23 of the Income Tax Act, that the Income Tax Act should run to the Philippine Islands. (Act of September 8, 1916, c. 463, Title I, Sec. 23, 39 Stat. 756, 776, cited in the Attorney General's opinion concerning the Narcotic Drugs Act, *ante*, p. 25). *The Congress was carefully discriminating between the Acts which it intended should run to those Islands, and those which it intended should not run there.*

in the Philippine Islands during all the years since the Act was first passed in 1913, until the year 1930 when it approved the application of the respondent here, the National City Bank of New York, for the establishment of these branches in Manila and Cebu (R. 42-43).

**L.—It thus appears that the situation as to the Federal Reserve Act not running to the Philippines is wholly analogous to that with relation to the National Bank Act.**

It is true that the Federal Reserve Act was originally enacted in 1913, before the present Organic Act for the Philippines of August 29, 1916, and that section 25 of the Federal Reserve Act as originally enacted in 1913 (c. 6, 38 Stat. 251, 273; Appendix I, *infra*, p. 58) contained a provision authorizing the Federal Reserve Board to permit national banks to establish branches "*in foreign countries or dependencies* of the United States for the furtherance of the foreign commerce of the United States and to act, if required to do so, as fiscal agents of the United States." **But it is also true that (1)** when the Federal Reserve Act was enacted in 1913 there was already in force the provision of the first section of the Foraker Act of 1902 for the Philippines, which was the Organic Act for those Islands in force at that time, containing the provision that section 1891 of the Revised Statutes should not run to the Philippine Islands, thereby clearly expressing the will of the Congress that the statutory laws of the United States should, generally, not run to those Islands; **that (2)** the Federal Reserve Act did not specifically mention the Philippine Islands, and there is nothing either in that Act itself or in any other Act of the Congress, specifically directing that it should run there; **that (3)** the Congress had already six years before that time, by the Act of March 4, 1907, c. 2908, 34 Stat. 1282 (*infra*, Appendix I, pp. 52-53), provided for the establishment of an official government bank in the Philippines, the Agricultural Bank, and had authorized the Philippine government to guarantee an

income of not exceeding 4 per cent upon the capital stock of that bank (afterwards converted into the present Philippine National Bank which is "subrogated to all of the rights, actions and obligations of the Agricultural Bank"; Sec. 6, Philippine Act No. 2612 creating the Philippine National Bank, Feb. 4, 1916, and is almost wholly government owned (*ante*, p. 30, and Appendix III, *infra*, pp. 71, 72, 77-78, 79); **and that (4)** no branch of any national bank was ever authorized by the Federal Reserve Board at any time prior to the amendment of Section 25 of the Federal Reserve Act by the Act of September 9, 1916 (or ever at any time, prior to the permit of 1930 to the present respondent bank to establish branches in Manila and Cebu).

**It follows that (1)** there was in Section 25 of the Federal Reserve Act as originally enacted in 1913, no sufficiently clear expression by the Congress of any specific intent that it should run to the Philippine Islands to take it out of the general rule theretofore established by the Congress by the first section of the Foraker Act then in force as the Organic Act for the Philippines, that the general statutory laws of the United States should not extend to those Islands; **and (2) that** it seems to have been the accepted administrative interpretation of the Act that it did not run there, since the Federal Reserve Board gave no license to establish branches of national banks in those Islands prior to the amendment of Section 25 of the Federal Reserve Act by the Act of September 7, 1916.

*Therefore, no such license having ever been actually granted prior to September 7, 1916, any possible question that might have been raised before that date as to whether or not, under the original Act of 1913, a Philippine branch of a national bank of the United States might validly have been established prior to the amendment of September 7, 1916, is wholly academic.* It was not in fact done; no national bank attempted to establish a branch in those Islands during that period. By the amendatory act of September 7,

1916, only nine days after the new Organic Act for the Philippines, making the phraseology of Section 25 of the Federal Reserve Act read, in general terms, "dependencies or insular possessions", *without specifically mentioning the Philippine Islands,* the Congress deliberately expressed its will (in connection with the provision of Section 5 of the then new Philippine Organic Act adopted only nine days previously) that that section of the Federal Reserve Act should not run to those Islands.

And did so again, three years afterwards, by the second amendatory act of 1919, again omitting to make any specific reference to those Islands (*supra,* pp. 29-30). In any event, therefore, Section 25 of the Federal Reserve Act has not been in effect in the Philippines since September 9, 1916; was not in effect there in January 1930 when the Federal Reserve Board gave its license (R. 42-43) purporting to permit this respondent bank to establish branches in Manila and Cebu; has never been in force in those Islands at any time since; and is not in force there now. It follows that the Federal Reserve Board's license of January 23, 1930 (R. 42-43) to the respondent bank was simply void. That the respondent bank's branches in Manila and Cebu are not in any sense statutory branches of a national bank of the United States under the Federal Reserve Act; and that whatever right to existence they may have in the Islands, or to continued toleration there, they owe wholly to Philippine law. They are, therefore, wholly subject to the Philippine laws, and to taxation in accordance with those laws. So far as the validity of the taxes here involved is concerned, their connection with the National City Bank of New York is wholly incidental, and of no legal significance whatever.

## POINT II

**There is no federal statute limiting the general taxing power of the insular government over Philippine branches of national banks of the United States, or over any other banks in those islands, ex-**

**cept the provision of Section 3 of the Organic Act that "the rule of taxation in said islands shall be uniform".**

As said above (Point I, *ante*, pp. 27-28), the taxing section of the National Bank Act is not in force in those Islands, and never has been. There is no other federal statute in force there relative to the taxation of banks, either of branches of national banks of the United States or other banks, *except* the provisions of the Organic Act of the Congress endowing the Philippine Legislature with general legislative and taxing powers,[16] subject only, so far as relates to anything pertinent here, to the limitation above quoted in Section 3 of the Organic Act, "that the rule of taxation in said islands shall be uniform" (Appendix I, *infra*, p. 48).

It has never been even suggested in this case that the taxes here involved violate that rule of uniformity in any way. There is, therefore, no federal statute in force in the Islands prohibiting the insular Legislature from providing for, — or the insular government from levying and collecting, — the taxes here involved.

## POINT III

**There is no implied prohibition preventing the Philippine Government from levying these taxes, or collecting them.**

A.—The taxes involved are the "capital taxes" and the "deposits taxes". No question has ever been made in this case but that both these taxes were levied and collected in strict accordance with the provisions of the Philippine statutes.[17]

B.—Since the taxing section of the National Bank Act does not run to the Philippine Islands, as above pointed out in the preceding Points of this argument, and since there is

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[16] Organic Act, Secs. 6, 7, 8, 10, 11 and 12; *infra*, Appendix I, pp. 48-49.

[17] Administrative Code, Secs. 1499 and 1502, *infra*, Appendix I, pp. 63-64.

no other federal statute expressly limiting in any way the power of the Philippine Legislature to levy these taxes in the exercise of the general legislative powers and taxing powers given it by the Organic Act,[18] it necessarily follows that the taxes here involved are valid, *unless* there is some implied prohibition or limitation against or upon the power of the Philippine Legislature to impose them. *The only possible such implied prohibition or limitation that has been suggested in this case is a possible presumption that the Congress did not intend* that "a derivative sovereignty like the government of the Philippine Islands could tax the instrumentalities of the very government which brought it into existence". That was the basis, at least in part, of the decision of the majority of the Philippine Supreme Court holding these taxes beyond the power of the Philippine government (R. 153). But, as the insular Supreme Court there recognized, the Congress may, of course, give its consent. **It comes back, therefore, to the question, simply, what was the intention of the Congress?** The presumption that a derivative sovereignty is not intended to tax instrumentalities of the superior sovereign, is after all only a rebuttable presumption; and, like other rebuttable presumptions, is to be used only as an aid in arriving at the true facts,—here as an aid in arriving at the real intent of the Congress.

C.—We are not unmindful that this court said in the Puerto Rican case, *Domenech, Treasurer,* v. *National City Bank, supra,* 294 U. S. 199, 205;

> "But like a State, though for a different reason, such an agency may not tax a federal instrumentality. * * *. A Territory or a possession may not do so because the dependency may not tax its sovereign. True the Congress may consent to such taxation; but the grant to the Island of a general power to tax should not be construed as a consent. Nothing less than an

[18] *Infra,* Appendix I, pp. 48-49).

> Act of Congress clearly and explicitly conferring the privilege will suffice. Not only do we find no such statutory consent but we are confronted by R. S. 5219, which *proprio vigore* extends to Territories, and the Congressional declaration that it, like other statutes of the United States shall, if not locally inapplicable, apply to Puerto Rico'',

but, as appears from the above quotation, *that was said in relation to a very different situation from that presented here.*

As there said, in the Puerto Rican case, the court was "confronted by R. S. 5219, which *proprio vigore* extends to Territories, and the Congressional declaration that it, like other statutes of the United States shall, if not locally inapplicable, apply to Puerto Rico."

**But that situation was directly opposite, or contrary, to that with which we are dealing here**; where, as we have already shown in the preceding Points of this argument, that statute, R. S. 5219, *does not run in the Philippines,* and the Congressional declaration in the Philippine Organic Act is directly to the contrary of that in the Puerto Rican Act; and is, that statutes of the United States *shall not apply* in the Philippine Islands "except when they specifically so provide, or it is so provided in this Act"; that is to say, unless the particular Act has been specifically extended to those Islands by the Congress,—which is not the case with either the National Bank Act or the Federal Reserve Act.

D.—Coming back then to the question of the actual intent of the Congress,—whether or not it was the Congressional intent that the presumption that a subordinate sovereignty should not tax instrumentalities of the superior sovereign should apply to these bank taxes,—and picking up all of the pertinent Acts of the Congress, as we would a deed, "by the four corners", and looking them over together, we find:

(1) That the Congress has expressed its plain intent that the National Bank Act shall not be in force in the Philippine Islands; and, therefore, that its taxing Section 41, now R. S. 5219, shall not apply there; that neither the National Bank Act nor the Federal Reserve Act has been extended to those Islands;

(2) That, in the Philippines, the Congress has established or authorized systems of laws that are different in many ways from those in force in the Territories and in the other insular possessions and in the States,—a different monetary system, different tariff laws, different immigration laws, different customs laws, different navigation laws, a different judicial system;—and in particular, with relation to the matter here immediately at hand, that it has authorized the Philippine government to guarantee the income of the Agricultural Bank,—a kind of national bank for the Philippine Islands, now merged into the government owned Philippine National Bank, a bank which throughout its history has been very truly and really a government institution of the Philippine Islands,—practically a branch of the insular government;

(3) That the Congress has given full legislative and taxing powers to the Philippine Legislature, unrestricted by any kind of express limitation with reference to imposing taxes on banks or on other property, *except* by the limitation in Section 3 of the Organic Act, "That the rule of taxation in said islands shall be uniform";

(4) That, with relation to revenue and taxation, the Congress inserted in Section 7 of the present Organic Act for the Philippine Islands, a clause,—*very unusual in a Territorial Organic Act, and wholly omitted from the corresponding section of the Organic Act for Puerto Rico,*— "specifically" extending the powers of the Philippine Legislature with reference to amending, altering, modifying or repealing *"any law, civil or criminal, continued in force by this Act"*,

"to all laws relating to revenue *and taxation* in effect in the Philippines" (*ante*, pp. 18-19; Appendix I, *infra*, p. 48; *italics supplied*);

(5) That by Section 6 of the present Organic Act,[19] enacted August 29, 1916, the Congress enacted that "**the laws now in force in the Philippines shall continue in force and effect**, except as altered, amended, or modified herein", without making any modification or alteration or limitation whatever as to the power of the Philippine Legislature in relation to the taxation of banks; and, further, that the Congress must be conclusively presumed to have been aware, when it enacted that Section 6 of the Organic Act, that among the laws then in force in the Philippine Islands, which it was thus ratifying, were Sections 1654 and 1657 of the Administrative Code of February 24, 1916, Act No. 2657 of the Philippine Legislature,[20] which contained the same provisions afterwards carried forward by Philippine Act No. 2711, March 10, 1917, into Sections 1499 and 1502 of the present Administrative Code of the Islands, under which the taxes here involved were levied;[21] and also Act 2612, Appendix III, *infra*, pp. 71-76, enacted February 4, 1916, creating the Philippine National Bank and merging (Sec. 6, p. 72, *infra*) the Philippine Government Agricultural Bank into it;

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[19] *Infra*, Appendix I, p. 48.

[20] Appendix I, *infra*, pp. 64-65.

[21] Appendix I, *infra*, pp. 63-64. The present Administrative Code was enacted as an amendment to the former Administrative Code of 1916 in force when the present Organic Act for the Islands was passed by the Congress. The enacting clause of the present Administrative Code reads:

"For the purpose of adapting it to the Jones Law and the Reorganization Act, Act No. 2657, known as The Administrative Code, is hereby amended in certain particulars; and said Act shall hereafter read as follows:" (*Infra*, p. 62).

(6) That by Section 19 of the Organic Act, the Congress directed (39 Stat. at p. 551; *infra*, Appendix I, p. 49):

> "All laws enacted by the Philippine Legislature shall be reported to the Congress of the United States, which hereby reserves the power and authority to annul the same";

and that although the present Administrative Code of the Philippine Islands, including these sections 1499 and 1502, reenacting as above pointed out sections 1654 and 1657 of the former Administrative Code, was itself enacted by the Philippine Legislature on March 10, 1917, only six months after the Organic Act was passed, and was expressly enacted, as is recited in its enacting clause, "for the purpose of adapting it to the Jones Law", the Organic Act, nevertheless the Congress has never seen fit to annul either of these sections or any of the kindred sections of the Administrative Code relating to the taxation of banks, which is at least "some evidence" that they met with Congressional approval, or were in accord with the policy and the intent of the Congress. *Clinton* vs. *Englebrecht*, 13 Wall. (80 U. S.) 434, 446; *Springer* vs. *Philippine Islands*, 277 U. S. 189, 208.

(7) That the Congress must be presumed to have been aware that, so long as it refrained from extending the taxing section of the National Bank Act to the Philippine Islands, the result was that, *unless* it was its intention and it was to be understood as leaving the Philippine Legislature unhampered to exercise its taxing powers uniformly as to all banks in the Islands including any branches of national banks established there, it would necessarily follow that the Philippine Legislature could not impose any taxes of any kind whatever upon such Philippine branches of United States national banks (if they could validly be established there at all), either income taxes or real estate taxes or any other taxes of any kind; since, in the absence

of the directions contained in the taxing section of the National Bank Act, there is no provision anywhere in the federal statutes authorizing the Philippine Legislature to levy one kind of taxes, but not another kind, upon branches of national banks established in the Islands, and such branches must either be wholly tax-free or else wholly subject to the taxing power given the Legislature by the Organic Act; and

(8) That if such national bank branches were to be construed to have such complete tax exemption in the Islands, it would give them such a business advantage as practically to yield them a monopoly of the banking business in the Islands, and would also necessarily

(9) Very greatly hamper the business, and greatly injure the income, of the Philippine National Bank, the government owned successor of the Agricultural Bank of the Islands, the income of which the Congress had expressly authorized the Philippine government to guarantee, which is practically an arm of the Philippine government; and

(10) That, as to banks in the Islands, it *would utterly destroy the uniformity of taxation which the Congress has expressly enjoined* by the clause in Section 3 of the Organic Act for the Philippines above quoted, "That the rule of taxation in said Islands shall be uniform".

**THOSE ARE THE THINGS WHICH WE FIND WHEN WE PICK UP THE PERTINENT LEGISLATION OF THE CONGRESS "BY THE FOUR CORNERS" AND EXAMINE IT.** There is one further consideration to be borne in mind, viz:

(11) That, after all, the usual *presumption* that the Congress does not intend that an agency or an instrumentality of the United States may be taxed by the subordinate government of a Territory, or of an insular possession, *applies with but limited force in the case of a bank, which is primarily a corporation for profit, and is only secondarily or in a limited sense, an agency of the federal*

*government in some of its fiscal operations.* As this court said in *Talbott* v. *Silver Bow County, supra,* 139 U. S. 438, 445-446;

> "A bank is an institution organized for private business, and with a view to individual profit, although it may serve a public purpose and such public purpose justify its creation."

**Now, taking all those things into consideration, what was the real Congressional intent?** Are we blindly to follow a presumption against its being intended that a subordinate sovereignty shall tax the superior sovereign, or its instrumentalities of any kind? Or, under these circumstances, does that presumption accord with what appears to have been the real intent of the Congress? Plainly it does not. The whole course of the Congressional legislation here involved rebuts that presumption as applied to these taxes levied by authority of the Philippine Legislature upon these banks by virtue of the general legislative and taxing powers with which the Congress has endowed that Legislature. The contrary conclusion would lead to results which the Congress cannot have intended.

If the Congress had intended to limit the taxing powers of the insular Legislature with respect to any banks established in the Islands,—whether branches of national banks or others,—it would have done so in express terms, either by expressly extending the National Bank Act with its taxing section to those Islands, as it has specifically extended various other Acts to the Islands when it desired them to become effective there; or else it would have enacted some other positive legislation definitely limiting and defining the insular taxing powers with respect to these banks in the Islands. *It cannot have intended to leave them wholly tax-free,* as is the necessary result as the statute now stands, *unless* they are subject to the general taxing powers of the Philippine Legislature. Nor is it to be presumed that the Congress intended, by mere implication, so widely to de-

part from the rule of uniformity in taxation in the Islands which it had itself expressly prescribed in Section 3 of the Organic Act; nor so seriously to injure the established Philippine National Bank almost wholly owned by the insular government, the successor to the Agricultural Bank which the Congress itself had manifestly intended to foster as a local national fiscal institution for the Islands by the provision of the Act of March 4, 1907, c. 2908, 34 Stat. 1282, *supra*, quoted *infra*, pp. 52-53, Appendix I, authorizing the insular government to guarantee its income.[22]

And these conclusions gain redoubled force when it is borne in mind that the Congress has not even extended the provisions in the Federal Reserve Act,—particularly has not extended those of Section 25 of that Act,—to the Islands; and, therefore, has never authorized the establishment in those Islands of branches of United States national banks at all. (See Point V, *infra*, pp. 44-46).

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[22] The Philippine National Bank, the government fiscal institution of the Islands, is practically all owned by the Philippine government, and almost a part of that government. This court summarized its organization and ownership in *Springer and Agoncillo* v. *Philippine Islands, supra*, 277 U. S. 189, 198, as follows:

> "The National Bank was created by Act 2612, approved February 4, 1916, subsequently amended by Act 2747, approved February 20, 1918, and Act 2938, approved January 30, 1921. The authorized capital of the bank, as finally fixed, was 10,000,000 pesos, consisting of 100,000 shares, of which, in pursuance of the legislative provisions, the Philippine Government acquired and owns 97,332 shares, the remainder being held by private persons. By the original act the voting power of the government-owned stock was vested exclusively in the Governor-General, but by the amended acts now in force that power was 'vested exclusively in a board, the short title of which shall be "Board of Control", composed of the Governor-General, the President of the Senate, and the Speaker of

## POINT IV

**The Congress, by Section 6 of the present Organic Act for the Philippines, expressly ratified the sections of the Philippine Administrative Code under which the taxes here involved were imposed.**

As already noted (*supra*, p. 38) the sections of the present Administrative Code of the Philippine Islands under which the taxes here in question,—"capital taxes" and "deposits taxes",—were levied, are almost literal re-enactments of the corresponding sections of the former Philippine Administrative Code of 1916 which was in force in the Islands on August 29, 1916, when the Organic Act was enacted. The sections of the present Administrative Code, Act No. 2711, approved March 10, 1917, under which these taxes were levied, are Sections 1499 and 1502. The corresponding sections of the former Administrative Code of 1916, Act No. 2657, effective July 1, 1916, were Sections 1654 and 1657. The sections of the present Administrative Code are printed in the Appendix (*infra*, pp. 63-64), and the corresponding sections of the former Administrative Code of 1916 are likewise in the same Appendix I, *infra*, pp. 64-65. **The Administrative Code of 1916 had been enacted by the Philippine Legislature on February 24, 1916, and had gone into effect in the Islands on July 1, 1916, only one month and twenty-nine days before the Congress enacted the "Jones Law" the (then) new Organic Act for the Philippines.** Necessarily such an important Act as the then so recently adopted Administrative Code of the Islands of 1916

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the House of Representatives.' The Governor-General was also divested of the power of appointment of the President and Vice-President of the bank, originally vested in him, and their election was authorized to be made by the directors from among their own number."

This court there held that the Governor General could not be supplanted by the legislative power in the exercise of the executive power of control of the Philippine National Bank. (*Pertinent parts of the Acts are in Appendix III, infra*, pp. 71-79.)

was in the minds of the members of the Congressional committee framing the new Organic Act; and, as it must be conclusively presumed, was in the minds of the Congress when they enacted Section 6 of the new Organic Act on August 29, 1916, expressly providing (39 Stat. at p. 547; Appendix I, *infra*, p. 48):

> "That the laws now in force in the Philippines shall continue in force and effect, except as altered, amended, or modified herein, until altered, amended, or repealed by the legislative authority herein provided or by Act of Congress of the United States",

without making any exception or limitation whatever as to those Sections 1654 and 1657 of the Administrative Code of 1916 which was then in force in the Islands. **This was, therefore, an express provision by the Congress that these sections of the Administrative Code as they then stood should "continue in force and effect" in the Islands until changed by the legislative authority "herein provided",—the Philippine Legislature,—or by Act of Congress.** Those sections were carried forward without any substantial change whatever into the present Administrative Code, still in force. They are thus, in effect, Acts of the Congress itself.

## POINT V

**There is no Federal statute authorizing the establishment of branches of United States national banks in the Philippine Islands.**

As above pointed out in Point I hereof, Section 25 [22] of the Federal Reserve Act authorizing the Federal Reserve Board to permit establishment of branches of national banks in foreign countries and in "dependencies or insular possessions" of the United States does not expressly mention the Philippine Islands, and has never been expressly extended to those Islands; and, therefore, is not

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[22] As amended by the Acts of September 7, 1916, and September 17, 1919; Appendix I, *infra*, pp. 59-60.

in force there, any more than is the taxing section of the National Bank Act, or any other part of the National Bank Act, or any other statute of the United States not specifically mentioning those Islands and not specifically extended thereto by any Act of Congress.[24]

It seems necessarily to follow that the attempted license from the Federal Reserve Board to the National City Bank to establish branches in Manila and Cebu in the Islands which was offered in evidence by the bank in this case (R. 42-43), **is wholly void, of no effect whatever, and gives no authority for the establishment or existence of those branches in the Philippine Islands.** Whatever else those so-called "branches" of the National City Bank in the Philippine Islands may really be,—if there is any legal authority whatever for their existence at all,—**they are not really branches of the National City Bank of New York under Section 25 of the Federal Reserve Act or any other act of the United States.** They owe their existence in the Philippine Islands, and their continued tolerance there, wholly to Philippine law. Whether they are to be looked upon as foreign banks within the Islands, or as *de facto* domestic banks of the Islands existing and carrying on business there under Philippine law,—in any event they are not, in any proper sense, "branches" of a national bank of the United States existing under any license from the Federal Reserve Board; since the Board has no power,—and never has had any power,—to license a branch bank in the Philippine Islands. The only power of the Board to license a branch of a national bank to be established outside of the continental United States,—or for any such branch to be organized or to exist or to carry on business under any law of the United States,—is Section 25 of the Federal Reserve Act as amended; which does not authorize such a branch in the Philippine Islands, because the Act does not

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[24] Point I, paragraphs "K" and "L", *ante*, pp. 28-33.

expressly mention those Islands, and it has never been extended there.

As above pointed out, it does not appear that the Federal Reserve Board ever licensed any branches of national banks to be established in the Philippine Islands during all of the years from the enactment of the Federal Reserve Act until this license was granted in 1930 for these Manila and Cebu branches of this respondent, the National City Bank of New York.

## CONCLUSION

There is no federal limitation whatever preventing the Philippine government from levying the taxes here in question upon these so-called Philippine "branches" of the National City Bank of New York; the taxes are valid; the judgments of the Supreme Court of the Philippine Islands and of the Court of First Instance of Manila are wrong, and should be reversed and the case remanded with directions to dismiss the action at the plaintiff's bank's costs.

Respectfully submitted,

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## APPENDICES


Appendix I. Statutes, Federal and Philippine.

Appendix II. Resume of Territorial Organic Acts.

Appendix III. Philippine National Bank. — Statutes.

Appendix IV. Acts of Congress specifically extending certain Acts to the Philippine Islands from time to time.

Appendix V. Congressional legislation. — Opposite Congressional policies with respect to Puerto Rico, and to the Philippines.

## APPENDIX I

### STATUTORY PROVISIONS

FEDERAL:

(1) The former Organic Act for the Philippine Islands, the "Foraker Act" (superseded by the "Jones Law" of August 29, 1916, the present Organic Act) provided in the last sentence of its first section (Act of July 1, 1902, c. 1369, Sec. 1, 32 Stat. 691):

> "The provisions of Section 1891 of the Revised Statutes of 1878[1] shall not apply to the Philippine Islands."

(2) The present Organic Act for the Philippine Islands, the "Jones Law" of August 29, 1916, c. 416, 39 Stat. 545, provides:

**Preamble**

> "Whereas it was never the intention of the people of the United States in the incipiency of the War with Spain to make it a war of conquest or for territorial aggrandizement; and
>
> Whereas it is, as it has always been, the purpose of the people of the United States to withdraw their sovereignty over the Philippine Islands and to recognize their independence as soon as a stable government can be established therein; and
>
> Whereas for the speedy accomplishment of such purpose it is desirable to place in the hands of the people of the Philippines as large a control of their domestic affairs as can be given them without, in the meantime, impairing the rights of

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[1] Section 1891 of the Revised Statutes provides:

> "Sec. 1891. The Constitution and all laws of the United States which are not locally inapplicable shall have the same force and effect within all the organized Territories, and in every Territory hereafter organized, as elsewhere within the United States."

sovereignty by the people of the United States, in order that, by the use and exercise of popular franchise and governmental powers, they may be the better prepared to fully assume the responsibility and enjoy all the privileges of complete independence: Therefore"

**Legislative and Taxing Powers**

"Sec. 3. That * * *.

"That * * *.

"That the rule of taxation in said islands shall be uniform."

"Sec. 5. That the statutory laws of the United States hereafter enacted shall not apply to the Philippine Islands, except when they specifically so provide, or it is so provided in this Act."

"Sec. 6. That the laws now in force in the Philippines shall continue in force and effect, except as altered, amended, or modified herein, until altered, amended or repealed by the legislative authority herein provided or by Act of Congress of the United States."

"Sec. 7. That the legislative authority herein provided shall have power, when not inconsistent with this Act, by due enactment to amend, alter, modify, or repeal any law, civil or criminal, continued in force by this Act as it may from time to time see fit.

"This power shall specifically extend with the limitation herein provided as to the tariff to all laws relating to revenue and taxation in effect in the Philippines."

"Sec. 8. That general legislative power, except as otherwise herein provided, is hereby granted to the Philippine Legislature, authorized by this Act."

"Sec. 10. That while this Act provides that the Philippine government shall have the authority to enact a tariff law the trade relations between the islands and the United States shall continue to be governed exclusively by the laws of the Congress of the United States; *Provided,* That tariff acts or acts amendatory to the tariff of the Philippine Islands shall

not become law until they shall receive the approval of the President of the United States, nor shall any act of the Philippine Legislature affecting immigration or the currency or coinage laws of the Philippines become a law until it has been approved by the President of the United States: *Provided further,* That the President shall approve or disapprove any act mentioned in the foregoing proviso within six months from and after its enactment and submission for his approval, and if not disapproved within such time it shall become a law the same as if it had been specifically approved."

"Sec. 11. That no export duties shall be levied or collected on exports from the Philippine Islands, but taxes and assessments on property and license fees for franchises, and privileges, and internal taxes, direct or indirect, may be imposed for the purposes of the Philippine government and the provincial and municipal governments thereof, respectively, as may be provided and defined by acts of the Philippine Legislature, and, where necessary to anticipate taxes and revenues, bonds and other obligations may be issued by the Philippine government or any provincial or municipal government therein, as may be provided by law and to protect the public credit:"

"Sec. 12. That general legislative powers in the Philippines, except as herein otherwise provided, shall be vested in a legislature which shall consist of two houses, one the senate and the other the house of representatives, and the two houses shall be designated 'The Philippine Legislature': * * *."

"Sec. 19. That * * *.

"All laws enacted by the Philippine Legislature shall be reported to the Congress of the United States, which hereby reserves the power and authority to annul the same."[2]

"Sec. 31. That all laws or parts of laws applicable to the Philippines not in conflict with any of the provisions of this Act are hereby continued in force and effect."

[2] Repealed May 29, 1928, Public 611, 70th Congress, c. 901, 45 Stat. 986, 996. Reinstated by Public 841, 70th Congress, 2nd Session, February 28, 1929, c. 364, 45 Stat. 1348.

(3) The first Organic Act for the Islands, the "Foraker Act", also provided (Secs. 76, 77 and 79, Act of July 1, 1902, *supra*, 39 Stat. at p. 710; 48 U. S. Code (1141-1146):

> "Sec. 76. That the government of the Philippine Islands is hereby authorized to establish a mint at the City of Manila, in said Islands, for coinage purposes, and the coins hereinafter authorized may be coined at said mint. And the said government is hereby authorized to enact laws necessary for such establishment: *Provided*, That the laws of the United States relating to mints and coinage, so far as applicable, are hereby extended to the coinage of said Islands.
>
> "Sec. 77.[3] That the government of the Philippine Islands is authorized to coin for use in said Islands a coin of the denomination of 50 centavos * * *, a coin of the denomination of 20 centavos * * *, and a coin of the denomination of 10 centavos * * *; and the standard of said silver coins shall be such that of one thousand parts, by weight, nine hundred shall be * * *.
>
> "Sec. 79. That the government of the Philippine Islands is also authorized to issue minor coins of the denominations of * * *."

(4) By the Act of March 2, 1903, c. 980, 32 Stat. 952, "An Act To establish a standard of value and to provide for a coinage system in the Philippine Islands", the Congress established an entirely separate system of coinage and currency for the Islands. Pertinent provisions are:

> (Section 1) "That the unit of value in the Philippine Islands shall be the gold peso consisting of * * * shall be legal tender for all debts, public and private, in the Philippine Islands."
>
> "Sec. 2. That in addition to the coinage author-

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[3] As amended by Sec. 4 of the Act of Congress of March 2, 1903, c. 980, 32 Stat. 952, 953.

ized for use in the Philippine Islands by the Act of July 1, 1902" (the "Foraker Act", first Organic Act for the Islands, *supra*) "the government of the Philippine Islands is authorized to coin to an amount not exceeding seventy-five million pesos for use in said islands, a silver coin of the denomination of one peso and of the weight * * *.

"Sec. 3. That the silver peso authorized by this Act shall be legal tender in the Philippine Islands * * *."

"Sec. 8." (as amended by Sec. 2, Act of February 6, 1905, and by the Act of June 23, 1906). "That the Treasurer of the Philippine Islands is hereby authorized, in his discretion, to receive in the Treasury of the government of the said islands or any of its branches deposits of the standard silver coins of one peso authorized by this Act to be coined, in sums of not less than twenty pesos, Philippine currency, and to issue certificates therefor in denominations of * * *. Such certificates shall be receivable for customs, taxes, and for all public dues in the Philippine Islands * * *, and when held by any banking association in said islands may be counted as a part of its lawful reserve * * *: *Provided further,* that the amount of gold coin held in such reserve shall not at any time exceed sixty per centum of the total amount of certificates outstanding."

(5) By the Act of February 9, 1903, c. 529, 32 Stat. 806, it was provided:

"That the provisions of Section 1014 of the Revised Statutes, so far as applicable shall apply throughout the United States for the arrest and removal therefrom to the Philippine Islands of any fugitive from justice charged with the commission of any crime or offense against the United States within the Philippine Islands, and shall apply within the Philippine Islands for the arrest and removal therefrom to the United States of any fugitive from justice charged with the commission of any crime or offense against the United States. Such fugitive may, by any judge or magistrate of the Philippine Islands, * * * be arrested and * * *."

"Sec. 2. That the provisions of Sections 5278 and 5279 of the Revised Statutes, so far as applicable, shall apply to the Philippine Islands, which, for the purposes of said sections, shall be deemed a Territory within the meaning thereof."

(6) By the Act of February 6, 1905, c. 454, 33 Stat. 698, entitled "*An Act to Extend Certain Provisions of the Revised Statutes of the United States to the Philippine Islands*", it was provided:

"That the provisions of Sections 5270, 5271, 5272, 5273, 5274, 5275, 5276, and 5277 of the Revised Statutes (as amended by the Act approved August 3, 1882), so far as applicable shall apply to the Philippine Islands for the arrest and removal therefrom of any fugitives from justice charged with the commission within the jurisdiction of any foreign government of any of the crimes provided for by treaty between the United States and such foreign nations, and for the delivery by a foreign government of any person accused of a crime committed within the jurisdiction of the Philippine Islands."

"Sec. 2. That the provisions of Sections 5409 and 5410 of the Revised Statutes are hereby made applicable to proceedings in extradition from the Philippine Islands, either to the United States * * *, or to foreign countries under the provisions of this Act."

(7) By the Act of January 18, 1907, c. 153, 34 Stat. 850, the Congress directed:

"That the Superintendent of Documents is hereby authorized and directed to supply one copy of each document delivered to him for distribution to State and Territorial libraries and designated depositories to the Library of the Philippine government, * * *."

(8) By the Act of March 4, 1907, "An Act to provide for the establishment of an agricultural bank in the Philippine Islands", c. 2908, 34 Stat. 1282, the Congress provided:

"That for the purpose of aiding in the establishment and operation of such an agricultural bank in the Philippine Islands as the general government thereof may hereafter specifically authorize the Philippine government is empowered to guarantee an income of not exceeding four per centum per annum upon cash capital actually invested by individuals or corporations in such agricultural bank; such guarantee shall be granted by an Act of the Philippine Commission which shall contain, among others, the following provisions:

"First. The guaranty shall be made to a company organized under the laws of the Philippine Islands, with its principal office in Manila and with branches in such parts of the islands as may be designated by the Philippine Commission.

"Second. The bank shall not grant loans except to those engaged in agricultural * * *.

"Third. No loan exceeding in amount five thousand dollars shall be made except upon the written authorization of the Secretary of Finance and Justice of the Philippine Islands.

"Fourth. Interest charge on loans shall not exceed ten per centum per annum: * * *

"For the further security of the Philippine Government said government shall provide by the aforesaid Act proper rules, including those for determining the actual cash capital invested in such banks and the net income * * *."

(9) By the Act of April 29, 1908, c. 152, 35 Stat. 70, it was provided:

"That until Congress shall have authorized the registry as vessels of the United States of vessels owned in the Philippine Islands, the government of the Philippine Islands is hereby authorized to adopt, from time to time, and enforce regulations governing the transportation of merchandise and passengers between ports or places in the Philippine Archipelago.

"Sec. 2. That on and after the passage of this Act the same tonnage taxes shall be levied, collected, and paid upon all foreign vessels coming into the United

States from the Philippine Islands which are required by law to be levied, collected, and paid upon vessels coming into the United States from foreign countries.

"Sec. 3. That the provisions of law restricting to vessels of the United States the transportation of passengers and merchandise directly or indirectly from one port of the United States to another port of the United States shall not be applicable to foreign vessels engaging in trade between the Philippine Islands and the United States."

(10) By the Act of August 5, 1909, entitled "An Act to Raise Revenue for the Philippine Islands, and for other purposes", c. 8, 36 Stat. 130, the Congress enacted an entirely separate tariff law for those Islands. The first section provides:

"That on and after sixty days following the passage of this Act, except as otherwise specifically provided in this Act, there shall be levied, collected, and paid, upon all articles, goods, wares, or merchandise of every kind and class entering the jurisdiction of the Philippine Islands, from any place or places, including the United States and its possessions, and in any manner whatsoever, either with intent to unlade therein, or which, after such entering, are consumed therein, or become incorporated into the general mass of property within said islands, the rates of import duty which are by this Act specifically provided."

Section 12 of that Act provides (36 Stat. at page 173):

"Sec. 12. That all articles, except rice, the growth, product, or manufacture of the United States and its possessions to which the customs tariff in force in the United States is applied and upon which no drawback of customs duties has been allowed therein going to the Philippine Islands shall hereafter be admitted therein free of customs duty when the same are shipped directly from the country of origin to the country of destination: *Provided*, That direct shipments shall include shipment in bond to foreign territory contiguous to the United States."

(11) It was also provided by the former Organic Act for the Philippine Islands, the "Foraker Act", *supra*, Act of July 1, 1902, c. 1369, Sec. 11, 32 Stat. 691, p. 695:

> "Sec. 11. That the government of the Philippine Islands is hereby authorized to provide for the needs of commerce by improving the harbors and navigable waters of said islands and to construct and maintain in said navigable waters and upon the shore adjacent thereto bonded warehouses, wharves, piers, light houses, signal and life-saving stations, buoys, and like instruments of commerce, and to adopt and to enforce regulations in regard thereto, including bonded warehouses wherein articles not intended to be imported into said islands nor mingled with the property therein, but brought into a port of said islands for reshipment to another country, may be deposited in bond and reshipped to another country without the payment of customs duties or charges."

(12) It was further provided by Section 84 of the same "Foraker Act", of July 1, 1902 (32 Stat. at p. 711):

> "Sec. 84. That the laws relating to entry, clearance, and the manifests of steamships and other vessels arriving from or going to foreign ports shall apply to the voyages each way between the Philippine Islands and the United States and the possessions thereof and all laws relating to the collection and protection of customs duties not inconsistent with the Act of Congress of March 8, 1902, 'Temporarily to Provide Revenue for the Philippine Islands', shall apply in the case of vessels and goods arriving from said islands in the United States and its aforesaid possessions.
>
> "The laws relating to seamen on foreign voyages shall apply to seamen on vessels going from the United States and its possessions aforesaid to said islands, • • • •.
>
> "The provisions of chapters 6 and 7, Title 48, Revised Statutes, so far as now in force, and any amendments thereof, shall apply to vessels making voyages

either way between ports of the United States or its aforesaid possessions and ports in the Islands; and the provisions of law relating to public health and quarantine shall apply in the case of all vessels entering a port of the United States or its aforesaid possessions from said islands, * * *."

**National Bank Act**

(13) Section 6 of the National Bank Act of June 3, 1864, c. 106, 13 Stat. 99, 101, carried forward without change in this respect into Section 5134 of the Revised Statutes (12 U. S. Code, 22) provides in pertinent part:

> That the persons uniting to form such an association shall, under their hands, make an organization certificate, which shall specify—
>
> First. The name * * *.
>
> Second. The place where its operations of discount and deposit are to be carried on, designating the state, territory, or district, and also the particular county and city, town, or village.
>
> Third. The amount of its capital stock, and the number of shares * * *.
>
> Fourth. The names and places of residence of the shareholders, and the number of shares held by each of them.
>
> Fifth. A declaration that said certificate is made to enable such persons to avail themselves of the advantages of this act.

(14) The last three provisos of Section 41 of the Act of June 3, 1864, *supra*, 13 Stat. at p. 112, as reenacted in Section 5219 of the Revised Statutes, provided:

> Nothing herein shall prevent all the shares in any association from being included in the valuation of the personal property of the owner or holder of such shares, in assessing taxes imposed by authority of the State within which the association is located; but the legislature of each State may determine and direct the

manner and place of taxing all the shares of national banking associations located within the State, subject only to the two restrictions, that the taxation shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State, and that the shares of any national banking association owned by non-residents of any State shall be taxed in the city or town where the bank is located, and not elsewhere. Nothing herein shall be construed to exempt the real property of associations from either State, county, or municipal taxes, to the same extent, according to its value, as other real property is taxed.

(15) By Acts of March 4, 1923, c. 267, 42 Stat. 1499, and March 25, 1926, c. 88, 44 Stat. 223, the foregoing Section 5219 of the Revised Statutes was amended so as to read as now (12 U. S. Code, Supp., 548; *italics supplied*):

Sec. 5219. The legislature of each State may determine and direct, subject to the provisions of this section, the manner and place of taxing all the shares of national banking associations located within its limits. The several States may (1) tax said shares, or (2) include dividends derived therefrom in the taxable income of an owner or holder thereof, or (3) tax such associations on their net income, or (4) according to or measured by their net income, provided the following conditions are complied with:

1. (a) The imposition by any State of any one of the above four forms of taxation shall be in lieu of the others, except as hereinafter provided in subsection (c) of this clause.

(b) In the case of a tax on said shares the tax imposed shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State. * * *

(c) In case of a tax on or according to or measured by the net income of an association, the taxing State may, except in case of a tax on net income, include the entire net income received from all sources, but the rate shall not be higher than the rate assessed upon other

financial corporations nor higher than the highest of the rates assessed by the taxing State upon mercantile, manufacturing, and business corporations doing business within its limits: * * *

**Federal Reserve Act**

(16) Meantime by Section 25 of the Federal Reserve Act of December 23, 1913, c. 6, 38 Stat. 251, 273, the Congress had provided:

> Sec. 25. Any national banking association possessing a capital and surplus of $1,000,000 or more may file application with the Federal Reserve Board, upon such conditions and under such regulations as may be prescribed by the said board, for the purpose of securing authority to establish branches **in foreign countries or dependencies of the United States** for the furtherance of the foreign commerce of the United States, and to act, if required to do so, as fiscal agents of the United States. Such application shall specify, in addition to the name and capital of the banking association filing it, the place or places where the banking operations proposed are to be carried on, and the amount of capital set aside for the conduct of its foreign business. The Federal Reserve Board shall have power to approve or to reject such application if, in its judgment, the amount of capital proposed to be set aside for the conduct of foreign business is inadequate, or if for other reasons the granting of such application is deemed inexpedient.
>
> Every national banking association which shall receive authority to establish foreign branches shall be required at all times to furnish information concerning the condition of such branches to the Comptroller of the Currency upon demand, and the Federal Reserve Board may order special examinations of the said foreign branches at such time or times as it may deem best. Every such national banking association shall conduct the accounts of each foreign branch independently of the accounts of other foreign branches established by it and its home office, and shall at the end of each fiscal period transfer to its general ledger the

profit or loss accruing at each branch as a separate item.

(17) By the Amendatory Act of September 7, 1916, c. 461, 39 Stat. 752, 755, the foregoing Section 25 was amended by inserting the words **"or insular possessions"** after the word "dependencies"; and by Section 2 of the Act of September 17, 1919, c. 60, 41 Stat. 285, 286 (12 U. S. Code, 601), the first two sentences were recast so as to read as follows (with further amendments not here pertinent):

> Sec. 25. Any national banking association possessing a capital and surplus of $1,000,000 or more may file application with the Federal Reserve Board for permission to exercise, upon such conditions and under such regulations as may be prescribed by the said board, either or both of the following powers:
>
> First. To establish branches in foreign countries or dependencies or insular possessions of the United States, and to act if required to do so as fiscal agents of the United States.
>
> Second. To invest an amount not exceeding in the aggregate ten per centum of its paid-in capital stock and surplus in the stock of one or more banks or corporations chartered or incorporated under the laws of the United States or of any State thereof, and principally engaged in international or foreign banking, or banking in a dependency or insular possession of the United States either directly or through the agency, ownership, or control of local institutions in foreign countries, or in such dependencies or insular possessions.
>
> Such application shall specify the name and capital of the banking association filing it, the powers applied for, and the place or places where the banking operations proposed are to be carried on. The Federal Reserve Board shall have power to approve or to reject such application in whole or in part if for any reason the granting of such application is deemed inexpedient, and shall also have power from time to time to increase or decrease the number of places where such banking operations may be carried on.

(18) Section 7 of the Internal Revenue Act of March 3, 1865, c. 78, 13 Stat. 469, 484, as carried into Section 5155 of the Revised Statutes, provided:

> Sec. 5155. It shall be lawful for any bank or banking association organized under State laws, and having branches, the capital being joint and assigned to and used by the mother-bank and branches in definite proportions, to become a national banking association in conformity with existing laws, and to retain and keep in operation its branches, or such one or more of them as it may elect to retain; the amount of the circulation redeemable at the mother-bank, and each branch, to be regulated by the amount of capital assigned to and used by each.

It was amended by Section 7 of the Act of February 25, 1927, amending the banking laws, c. 191, 44 Stat. 1224, 1228, and further amended by Section 23 of the banking act of 1933 (Act of June 16, 1933, c. 89, 48 Stat. 162, 189-190), so as to read:

> Sec. 5155. The conditions upon which a national banking association may retain or establish and operate a branch or branches are the following:
>
> (a) A national banking association may retain and operate such branch or branches as it may have in lawful operation at the date of the approval of this Act, and any national banking association which has continuously maintained and operated not more than one branch for a period of more than twenty-five years immediately preceding the approval of this Act may continue to maintain and operate such branch.
>
> (b) If a State bank is hereafter converted into or consolidated with a national banking association, or if two or more national banking associations are consolidated, such converted or consolidated associations may, with respect to any of such banks, retain and operate any of their branches which may have been in lawful operation by any bank at the date of the approval of the Act.

(c) A national banking association may, with the approval of the Comptroller of the Currency, establish and operate new branches: (1) Within the limits of the city, town or village in which said association is situated, if such establishment and operation are at the time expressly authorized to State banks by the law of the State in question; and (2) at any point within the State in which said association is situated, if such establishment and operation are at the time authorized to State banks by the statute law of the State in question by language specifically granting such authority affirmatively and not merely by implication or recognition, and subject to the restrictions as to location imposed by the law of the State on State banks. No such association shall establish a branch outside of the city, town or village in which it is situated unless it has a paid-in and unimpaired capital stock of not less than $500,000: *Provided*, That in States with a population of less than one million, and which have no cities located therein with a population exceeding one hundred thousand, the capital shall be not less than one-half million, and which have no cities located therein with a population exceeding fifty thousand, the capital shall not be less than $100,000.

(d) The aggregate capital of every national banking association and its branches shall at no time be less than the aggregate minimum capital required by law for the establishment of an equal number of national banking associations situated in the various places where such association and its branches are situated.

(e) No branch of any national banking association shall be established or moved from one location to another without first obtaining the consent and approval of the Comptroller of the Currency.

(f) The term "branch" as used in this section shall be held to include any branch bank, branch office, branch agency, additional office, or any branch place of business located in any State or Territory of the United States or in the District of Columbia at which deposits are received, or checks paid, or money lent.

**(g) This section shall not be construed to amend or repeal section 25 of the Federal Reserve Act, as**

**amended, authorizing the establishment by national banking associations of branches in foreign countries, or dependencies, or insular possessions of the United States.**[4]

(h) The words "State bank", "State banks", "bank", or "banks", as used in this section, shall be held to include trust companies, savings banks, or other such corporations or institutions carrying on the banking business under the authority of State laws.

PHILIPPINE STATUTES:

(1) Sections 1499[5] and 1502 of the Philippine Administrative Code (Philippine Act No. 2711, approved March 10, 1917) under which the taxes here involved were levied, together with the enacting clause of the Code, read as follows:

"For the purpose of adapting it to the Jones Law and the Reorganization Act, Act numbered two thousand six hundred and fifty-seven, known as The Administrative Code, is hereby amended in certain particulars; and said Act shall hereafter read as follows:

"Section 1. *Title of Act.*—This Act shall be known as the Administrative Code.

"Sec. 1499.[5-a] *Tax on capital, deposits, and circulations of banks.*—Subject to the exemption herein made there shall be collected from banks the following taxes on capital, deposits, and circulations:

"(a) Upon the capital employed by the bank, for each month, one twenty-fourth of one per centum.

"(b) Upon the average amount of deposits of money, subject to payment by check or draft, or represented by certificates of deposits, or otherwise, whether pay-

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[4] Re-enacted, without any change as to branches located outside of the continental United States, by the Act of August 23, 1935, c. 614, Sec. 305, 49 Stat. ___; Pub. No. 305, 74th Cong.; 12 U. S. Code 36 ("October, 1935, Special Pamphlet").

[5] As amended by Act No. 3199.

[5-a] As amended by Act 3199.

able on demand, or on some future day, for each month, one-eighteenth of one per centum.

"(c) Upon the average amount of circulation issued by the bank, including as circulation all notes and other obligations calculated or intended to circulate or be used as money, but not including such as may be retained in the vault of the bank or redeemed and on deposit for said bank, for each month, one-twelfth of one per centum.

(d) "Bank" as herein used, includes every incorporated or other bank, and every person, association or company having a place of business where credits are opened by the deposit or collection of money or currency subject to be paid or remitted upon draft, check, or order, or where money is advanced or loaned on stocks, bonds, bullion, bills of exchange, or promisory notes are received for discount or for sale.

"Capital employed" does not include money borrowed or received from time to time in the usual course of business from any person not a partner of or interested in such bank; and no tax shall be imposed on the capital employed by any person whose sole business is lending money on real-estate security.

Sec. 1502. *Computing resources of bank incorporated abroad.*—The amount of capital used by a bank within the Philippine Islands, when such bank is a branch of a bank incorporated under laws of the United States or a foreign country, shall, for the purposes of assessment hereunder, be determined in the following manner: The total amount of the capital of the bank shall be ascertained, and, likewise, the total amount of the net earnings of the bank accruing during the preceding six months, and also the total amount of the net earnings accruing from the bank's business conducted in the Philippine Islands; and such a proportion of the total capital of the bank shall be deemed to have been employed in the Philippine Islands as the net earnings in the Philippine Islands bear to the total net earnings of the bank.[6]

[6] These two Sections 1499 and 1502 of the present Administrative Code were reenactments without change of Sections 1654 and 1657 of the former Administrative Code,

(2) Sections 1654 and 1657 of the former Philippine Administrative Code of 1916 provided:

"Sec. 1654. Tax on capital, deposits, and circulation of banks.—Subject to the exemptions herein made there shall be collected from banks the following taxes on capital, deposits, and circulation:

"(a) Upon the capital employed by the bank, for each month, one twenty-fourth of one per centum.

"(b) Upon the average amount of deposits of money, subject to payment by check or draft, or represented by certificates of deposit, or otherwise, whether payable on demand or at some future day, for each month, one-eighteenth of one per centum.

"(c) Upon the average amount of circulation issued by the bank, including as circulation all notes and other obligations calculated or intended to circulate or be used as money, but not including such as may be retained in the vault of the bank or redeemed and on deposit for said bank, for each month, one-twelfth of one per centum.

"(d) Upon the average amount of such circulation issued as above, being beyond the amount of the paid-in capital of the bank, for each month, and as an additional tax, one per centum.

"'Bank' as herein used, includes every incorporated or other bank, and every person, association, or company having a place of business where credits are opened by the deposit or collection of money or currency subject to be paid or remitted upon draft, check, or order, or where money is advanced or loaned on stock, bonds, bullion, bills of exchange, or promissory notes are received for discount or for sale.

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Philippine Act No. 2657 of February 24, 1916 (*infra*, Appendix I, 64-65), which was in force on August 29, 1916, the date of the enactment of the present Organic Act of Congress for the Philippines. The present Administrative Code, Act No. 2711, is, in form, simply an amendment of the former Administrative Code of 1916 (*ante*, p. 62), "for the purpose of adapting it to the Jones Law", the present Organic Act, and to the Philippine "Reorganization Act", Act No. 2666, approved November 18, 1916.

"'Capital employed' does not include money borrowed or received from time to time in the usual course of business from any person not a partner of or interested in such a bank; and no tax shall be imposed on the capital employed by any person whose sole business is lending money on real-estate security."

"Sec. 1657. Computing resources of bank incorporated abroad.—The amount of capital used by a bank within the Philippine Islands, when such bank is a branch of a bank incorporated under laws of the United States or a foreign country, shall, for the purposes of assessment hereunder, be determined in the following manner: The total amount of the capital of the bank shall be ascertained, and, likewise, the total amount of the net earnings of the bank accruing during the preceding six months, and also the total amount of the net earnings accruing from the bank's business conducted in the Philippine Islands; and such a proportion of the total capital of the bank shall be deemed to have been employed in the Philippine Islands as the net earnings in the Philippine Islands bear to the total net earnings of the bank."

## APPENDIX II

**Resumé of Territorial Organic Acts before the Spanish War, in relation to extending statutory laws of the United States to the Territories.**

(1) In the earlier Organic Acts for the Territories, the Congress did not extend the statutory laws of the United States generally to the Territory; but, instead, extended only such Acts as were particularly named in the Organic Act. Thus:

The Organic Act for the Territory of Orleans and District of Louisiana, Act of March 26, 1804, c. 38, 2 Stat. 283, 285, provided, with reference to the Territory of Orleans thereby created:

"Sec. 7. That the following Acts, that is to say:

"An Act for the punishment of certain crimes against the United States.

"An Act, in addition to an Act for the punishment of certain crimes against the United States.

"An Act to prevent citizens of the United States from privateering • • •.

"An Act for the punishment • • •.

"An Act respecting fugitives from justice, • • •.

"An Act prohibiting the carrying on of the slave trade • • •.

"An Act to prevent the importation of certain persons • • •.

"An Act to establish the post office of the United States.

"An Act • • •.

"An Act • • •.

"An Act making provision relative to rations for Indians, • • •, *shall extend to, and have full force and effect in the above mentioned Territories.*" (*Italics supplied*).[1]

(2) The Organic Act for the Territory of Florida, Act

[1] The very first Territorial Organic Act after the adoption of the Constitution was the Act of August 7, 1789, c. 8, 1 Stat. 50, for the government of the territory northwest of the River Ohio, enacted merely in order to continue in force the Ordinance of 1787, and to adapt it to the Con-

of March 30, 1822, c. 13, 3 Stat. 654, contained a similar enumeration, but *with a general provision added.* It provided:

> Sec. 9. That the following Acts, that is to say:
>
> "An Act for the punishment of certain crimes • • •.
>
> "An Act to provide for the punishment • • •.
>
> "An Act in addition to the Act • • •.
>
> "An Act for the punishment • • •.
>
> "An Act respecting fugitives from justice • • •.
>
> "An Act to prohibit the carrying on of the slave trade • • •.
>
> "An Act in addition to the Act • • •.
>
> "An Act to prevent settlements being made on lands ceded • • •.
>
> "An Act • • •.
>
> "An Act • • •.
>
> "An Act • • •.

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stitution. That Act contained no express provisions relative to the force of the statutory laws of the United States in the Territory.

The next Act, that of May 26th, 1790, c. 14, 1 Stat. 123, erecting the territory south of the Ohio River, merely provided:

> "And the government of the said territory south of the Ohio shall be similar to that which is now exercised in the territory northwest of the Ohio";

and a similar simple provision was made in Section 6 of the next following Act, that for Mississippi Territory, Act of April 7, 1798, c. 28, 1 Stat. 549, 550. The Territories of Indiana, Michigan, Illinois, Missouri, Alabama and Arkansas, being formed by the division of previously existing Territories, the Congress contented itself with continuing in force in those Territories respectively the laws theretofore in force in the parent Territories, without any express provision as to the extension thereto of the statutory laws of the United States. (INDIANA, Act of May 7, 1800, 2 Stat. 58; MICHIGAN, Act of January 11, 1805, 2 Stat. 309; ILLINOIS, Act of February 3, 1809, 2 Stat. 514; MISSOURI, Act of June 4, 1812, 2 Stat. 743; ALABAMA, Act of March 3, 1817, 3 Stat. 371; ARKANSAS, Act of March 2, 1819, 3 Stat. 493).

"An Act * * *.

"And the laws of the United States relating to the revenue and its collection, subject to the modifications stipulated by the 15th Article of the Treaty * * *; *and all other public laws of the United States, which are not repugnant to the provisions of this Act, shall extend to, and have full force and effect in, the Territory aforesaid*". (*Italics supplied*)

(3) In the Organic Act for Wisconsin the Congress entirely omitted any enumeration of particular statutory laws of the United States to be extended to the Territory, and declared broadly (Act of April 20, 1836, c. 54, Sec. 12, 5 Stat. 10, 15):

"Sec. 12. That the inhabitants of the Territory shall be entitled to, and enjoy, all and singular the rights, privileges, and advantages, granted and secured to the people of the Territory of the United States northwest of the River Ohio * * *; *and further, the laws of the United States are hereby extended over, and shall be in force in, said Territory, so far as the same, or any provisions thereof may be applicable.*" (*Italics supplied*)

Substantially the same provision was repeated in the Organic Act for the Territory of Iowa, Act of June 12, 1838, c. 96, Sec. 12, 5 Stat. 235, 239; in the Organic Act for the Territory of Oregon, Act of August 14, 1848, c. 177, Sec. 14, 9 Stat. 323, 329; and in that for Minnesota, Act of March 3, 1849, c. 121, Sec. 12, 9 Stat. 403, 407,—in each case without any specific enumeration of any particular federal statutes to be extended to the Territory.

(4) In the Organic Act for the Territory of New Mexico, the first Territory to be organized on the lands acquired by the Mexican War (Act of September 9, 1850, c. 49, Sec. 17, 9 Stat. 446, 452), the Congress went one step further, expressly extending "the Constitution" as well as "all laws of the United States which are not locally inapplicable" to the Territory,—the provision reading:

"Sec. 17. That the Constitution, and all laws of the

United States which are not locally inapplicable shall have the same force and effect within the said territory of New Mexico as elsewhere within the United States."

That provision was repeated in the Organic Act for the Territory of UTAH, Act of September 9, 1850, c. 51, Sec. 17, 9 Stat. 453, 458;[2] in that for COLORADO, Act of February 28, 1861, c. 59, Sec. 16, 12 Stat. 172, 176;[3] in that for NEVADA, Act of March 2, 1861, c. 133, Sec. 16, 12 Stat. 209, 214; for DAKOTA, Act of March 2, 1861, c. 136, Sec. 16, 12 Stat. 239, 244;[4] for IDAHO, Act of March 3, 1863,

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[2] The Territory of Washington being carved out of that of Oregon, the Congress contented itself, as in earlier cases, with simply directing that the laws "now in force therein" by virtue of the legislation of Congress in reference to the Territory of Oregon were "continued in force in said Territory of Washington until they shall be repealed or amended by future legislation", without any express provision as to extending federal legislation to this Territory. Act of March 2, 1853, c. 90, Sec. 12, 10 Stat. 172.

[3] The Organic Act for the Territories of Nebraska and Kansas,—"the Kansas Nebraska Act",—of May 30, 1854, c. 59, 10 Stat. 277, was unusual in form, because of the slavery question. It provided, however (Sec. 14, 10 Stat. 282-283): "That the Constitution, and all Laws of the United States which are not locally inapplicable, shall have the same force and effect within the said Territory of Nebraska as elsewhere in the United States, *except*" the "Missouri Compromise" legislation.

[4] The Territory of Arizona being carved out of that of New Mexico, the Congress made no special provision in its Organic Act for extending the statutory laws of the United States to the new Territory, but contented itself with providing that "all legislative enactments of the Territory of New Mexico not inconsistent with the provisions of this Act" should extend to Arizona "until repealed or amended by future legislation", *except* those recognizing the relation of master and slave, and that there should "neither be slavery nor involuntary servitude in the said Territory" otherwise than in the punishment of crime. Act of Feb'y 24, 1863, c. 56, Secs. 2 and 3, 12 Stat. 664.

c. 117, Sec. 13, 12 Stat. 808, 813; for MONTANA, Act of May 26, 1864, c. 95, Sec. 13, 13 Stat. 85, 91; and for WYOMING, Act of July 25, 1868, c. 235, Sec. 16, 15 Stat. 178

## APPENDIX III

The Acts of the Philippine Legislature creating the Philippine National Bank provide, in pertinent part:

No. 2612.—*An Act creating the Philippine National Bank.*

Section 1. There is hereby created a bank to be known as the Philippine National Bank, the short title of which shall be the National Bank. Its principal domicile and place of business shall be in the city of Manila.

Sec. 3. The capital of the National Bank shall be twenty million pesos, Philippine currency, divided into two hundred thousand shares of the value, at par, of one hundred pesos, Philippine currency, each.

Sec. 4. The Government of the Philippine Islands not later than January thirty-first, nineteen hundred and seventeen, shall purchase one hundred and one thousand shares, at par, of the said National Bank, the payment for said shares of the Government to be made as hereinafter provided. Ninety-nine thousand shares of said capital stock shall be offered to the public at par, as hereinafter provided.

Sec. 5. The following sums are hereby appropriated for the payment of the shares to be purchased by the Government of the Philippine Islands.

(a) The sum of one million three hundred thousand pesos which is hereby appropriated out of any funds in the Insular Treasury not otherwise appropriated;

(b) One million pesos, on or before July thirty-first, nineteen hundred and sixteen, and another one million pesos on or before January thirty-first, nineteen hundred and seventeen, which shall be invested from the insurance fund created by Act Numbered Seventeen hundred and twenty-eight, the public works bonds sinking fund, created by Act Numbered Seventeen hundred and twenty-nine, and the friar lands bonds sinking fund, created by Act Numbered Twenty-five hundred and fifty: * * *

Sec. 6. All the assets and liabilities of the Government Agricultural Bank of the Philippine Islands,[1] created under Act Numbered Eighteen hundred and sixty-five, as amended, shall be transferred to the National Bank: *Provided*, That the transfer of the assets of the Agricultural Bank, represented by the capital and the net profits thereof shall be made as part payment of the one hundred and one thousand shares subscribed by the Government of the Philippine Islands. This transfer shall be understood as taking place upon the inauguration of the National Bank in conformity with the provisions of section nine of this Act, after which the National Bank shall be subrogated to all the rights, actions and obligations of the Agricultural Bank, and the Agricultural Bank shall thereafter be deemed abolished.

Sec. 8. At no time shall shares be sold to the public if, as a result thereof, the part of the capital stock held by private investors will equal or exceed the part owned by the Government of the Philippine Islands.

Sec. 9. The National Bank shall be inaugurated within one hundred and eighty days from and after the passage of this Act, and the Governor-General shall fix such inauguration by proclamation upon the certificate of the Insular Auditor and the president of the bank that said institution is ready to begin operations.

Sec. 15. The National Bank is hereby authorized to issue real estate bonds in any sum not to exceed ninety per cent of the amount of real estate loans held by said bank, under section ten herein. Said bonds shall be engraved. Said bonds shall be signed by the president of the bank, authenticated by the Insular Auditor * * *.

Sec. 18. Said National Bank is hereby authorized to issue its notes, which said notes shall be known as circulating notes. * * *

Sec. 19. The Philippine National Bank is hereby

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[1] See Act of Congress providing for the establishment of the Agricultural Bank, and authorizing the Philippine government to guarantee its income; Act of March 4, 1907, c. 2908, 34 Stat. 1282; Appendix I, *ante*, pp. 52-53.

authorized to receive deposits of funds of the Insular Government, the provinces, municipalities, Post Savings Bank, associations, corporations, and private persons, and it is hereby made obligatory for the aforesaid Insular, provincial, and municipal governments to make their deposits in the National Bank. The interest paid by said bank on deposits so made shall not exceed four per centum per annum: *Provided, however,* That whenever in the judgment of the Governor-General, it is in the public interest to make deposits from public funds in other banks he is hereby authorized to cause the same to be done under such terms and conditions as he may deem proper.

Sec. 20. The affairs and business of the National Bank shall be managed by a board of directors consisting of the president of the bank, who shall be chief executive thereof and chairman of the board at the same time, one vice-president, who shall assist the president and act in his stead in case of absence or incapacity, and five members elected as hereinafter provided.

The president of the bank shall have power * * *. It shall also be his duty—

(a) To make, * * * all contracts * * *;

(b) To report weekly to the board of directors * * *;

(c) To furnish, upon request of the Governor-General of the Philippine Islands, any information in his possession regarding the operations of said bank.

Sec. 21. The president and vice-president shall be appointed by the Governor-General, by and with the consent of the Upper House of the Philippine Legislature, and may be removed for cause by said Governor-General, by and with the consent of said House. The five remaining members shall be elected and may be removed in accordance with the provisions of Act Numbered Fourteen hundred and fifty-nine, the Corporation Law.

Sec. 24. All the other officers and employees of said National Bank or any branch thereof, shall, before entering upon the performance of their duties, furnish a fidelity bond * * *. For this purpose, all officers and

employees of the National Bank shall be deemed public officers and employees respectively, * * *.

Sec. 25. The Attorney General of the Philippine Islands shall be attorney for said National Bank: *Provided, however,* That the board of directors of said bank shall have the power to employ other attorneys in special cases.

Sec. 26. The Insular Auditor shall be *ex officio* auditor of the National Bank and it shall be his duty to make an examination of the books and the administration of the bank at least once every three months and report thereon to the Governor-General of the Philippine Islands and the board of directors of said bank.

Sec. 27. The National Bank shall be subject to inspection by the Insular Treasurer with regard to its solvency in the manner provided by law.

Sec. 28. The Secretary of Finance and Justice, the Insular Treasurer, and the Insular Auditor are hereby prohibited from owning stock in the National Bank, or from becoming indebted to said National Bank directly or indirectly, in any sum.

Sec. 29. The Insular Treasurer and Auditor or other officers designated by law to inspect or investigate the condition of said National Bank shall not reveal to any person other than the Governor-General and the board of directors the details of the inspection or investigation, nor shall they * * *.

Sec. 33. The said National Bank, by this Act created, may establish not to exceed two branches or agencies in the United States of America, at such points as may be determined upon by the board of directors of the said National Bank. It shall be the function of each of the said agencies—

(a) To receive, transmit and disburse any funds of the Philippine Government payable in the United States.

(b) To receive, transmit and disburse any funds of the United States Government which may be placed on deposit with, or entrusted to it.

(c) To receive, transmit and disburse any funds

of individuals, firms, companies or corporations engaged in business with the Philippine Islands, or having interests therein.

(d) To engage in business to the extent permitted by law of the United States with the Federal Reserve Bank of the district in which said branches or agencies may be located, and if and when permitted by law of the United States, to conduct a deposit and discount business with the said Federal Reserve Bank to the extent that conditions may require, under the instructions of the board of directors of the said National Bank.

Sec. 34. The National Bank may establish branch banks in the provincial capitals and in those municipalities in which, in the judgment of the board of directors, the industrial, commercial, or agricultural movement may require it. * * *

With the authorization of the Governor-General first had, the board of directors may appoint as agents, cashiers or tellers of said banks the provincial or municipal treasurers, * * *.

Sec. 47. All profits assigned as dividends to the shares of the Government shall be paid into the Insular Treasury, for the general funds thereof, and shall be available for any appropriation.

Sec. 48. The legal existence of the Philippine National Bank created by this Act shall be for a period of fifty years, counting from the day on which it began officially its operations. This period may be extended for fifty years more by an Act of the Philippine Legislature.

Sec. 49. All banks not organized and transacting business under a charter granted by the Philippine Legislature expressly exempting them from the restrictions and penalties of this section, and all persons or corporations doing the business of bankers, brokers, or savings institutions, are prohibited from using the word "national" as a portion of the name or title of such bank, corporation, firm or partnership; and any violation of this prohibition committed after ninety days subsequent to the date of enactment of this Act

shall subject the party chargeable therewith to a penalty of not less than one hundred pesos for each day during which it is committed or repeated.

Sec. 50. For a period of six months from and after the enactment of this Act, the president, with the approval of the board of directors of the National Bank, may, with the prior approval of the proper head of Department in which such official or employee is employed, require the services of any official or employee of the Insular or provincial governments for the purpose of assisting in the organization of the National Bank. * * *

Sec. 54. This Act shall take effect on its passage. *Enacted*, February 4, 1916.

No. 2747.—*An Act to amend in certain particulars Act Numbered Twenty-six hundred and twelve, entitled "An Act creating the Philippine National Bank."*

Section 1. In order to explain certain provisions, increase the stability of the institution, and extend its powers, Act Numbered Twenty-six hundred and twelve, entitled, "An Act creating the Philippine National Bank," is hereby amended in certain particulars, so that hereafter the said Act shall read as follows:

"Sec. 51. The Philippine National Bank is hereby authorized to guarantee, both as to principal and interest, or either, bonds issued by duly incorporated companies for the erection of and addition or additions to industrial plants or manufactories principally used for the manufacture and preparation of the products of the Philippine Islands: *Provided, however,* That such guarantee shall only be lawful when approved by a committee composed of the Governor-General of the Philippine Islands and the Presiding Officers of the two Houses of the Philippine Legislature.

"Subject to the same approval, the National Bank is hereby authorized to purchase bonds issued by any duly incorporated company engaged in the manufacture or preparation of products of the Philippine Islands. Such bonds shall be secured by a first mort-

gage or deed of trust on the property of the company. The face value of the bonds issued and secured by such mortgage or deed of trust shall not exceed sixty per cent (60%) of the fair value of the property securing the bonds. The property serving as security for the bonds shall consist of land, buildings, machinery, and equipment of such company in the Philippine Islands."

Sec. 2. This Act shall take effect on its approval. *Approved,* February 20, 1918.

No. 2938.—*An Act to amend Act Numbered Twenty-six hundred and twelve, entitled, "An Act creating the Philippine National Bank," as amended by Act Numbered Twenty-Seven hundred and forty-seven.*

Section 1. Act Numbered Twenty-six hundred and twelve, entitled, "An Act creating the Philippine National Bank," as amended by Act Numbered Twenty-seven hundred and forty-seven, is hereby amended in certain particulars, so that hereafter the said Act shall read as follows:

"Section 1. There is hereby created a bank to be known as the Philippine National Bank, the short title of which shall be the National Bank. Its principal domicile and place of business shall be in the city of Manila.

"Sec. 2. • • •

"Sec. 3. The National Bank is hereby authorized to increase its capital from twenty million pesos, Philippine currency, to fifty million pesos, Philippine currency, and may for this purpose make a new issue of three hundred thousand shares of stock, which shall be denominated the second issue, at the par value of one hundred pesos, Philippine currency, each.

"Sec. 4. The Government of the Philippine Islands, not later than June thirtieth, nineteen hundred and twenty-one, shall purchase all remaining shares of the first issue and part of those of the second issue to the aggregate number of not less than one hundred and fifty-three thousand, at par, the payment of the said shares of the Government to be made as hereinafter

provided. The remaining shares may be offered to the provincial and municipal governments or to the public at a price not below par which the board of directors of the Bank shall from time to time determine: *Provided*, That the Government of the Philippine Islands, upon agreement with the board of directors of the Bank, may at any time after June thirtieth, nineteen hundred and twenty-one, purchase all or part of the stock on hand at a price not below par.

"The voting power of all the stock of the National Bank owned and controlled by the Government of the Philippine Islands shall be vested exclusively in a board, the short title of which shall be 'Board of Control,'[2] composed of the Governor-General, the President of the Senate, and the Speaker of the House of Representatives.

"Sec. 5. There are hereby appropriated, out of any funds in the Insular Treasury not otherwise appropriated, such sums as may be necessary for the payment of the shares to be purchased by the Government of the Philippine Islands: *Provided*, That the capital and surplus of the Agricultural Bank of the Philippine Islands shall be applied primarily to said payment: *And provided, further*, That no sum shall be set up on the books of the Auditor until it shall be necessary to make the payment or payments authorized by this Act.

No. 3174.—*An Act to rehabilitate the Philippine National Bank, making certain appropriations for this purpose and amending the Charter of said Bank contained in Act Numbered Twenty-six hundred and twelve, as amended, and for other purposes.*

Section 1. The authorized paid-up capital stock of the Philippine National Bank is hereby reduced to one hundred thousand shares of the value at par of one hundred pesos each, which number shall include the

[2] This voting provision was held invalid by this court, holding that the voting power, an executive function, is in the Governor-General. *Springer* vs. *Gov't of the Philippine Islands, supra*, 277 U. S. 189, 197 *es seq.*, 209.

shares at present held by the public: *Provided,* That the Bank may purchase the shares held privately at the price at which they were quoted on the date of the registration of the sale in the books of the Bank, provided such price does not exceed their value at par. The Board of Directors, with the approval of the Secretary of Finance, shall determine what was the price so quoted. *No stock shall be sold to the public hereafter.* (*Italics supplied*)

## APPENDIX IV

**Examples of Acts of Congress specifically extending certain sections of the Revised Statutes, and other Acts of Congress, to the Philippine Islands, from time to time.**

A. WHILE THE FORMER ACT, THE PHILIPPINE "FORAKER ACT" OF 1902 WAS IN EFFECT, AND BEFORE THE ENACTMENT OF THE PRESENT ORGANIC ACT, THE "JONES LAW" OF AUGUST 29, 1916.

(1) Section 76 of the "Foraker Act" for the Philippines, itself, expressly provided:

> "That the laws of the United States relating to mints and coinage, so far as applicable, are hereby extended to the coinage of said Islands" (Appendix I, *ante*, p. 50).

(2) By Section 84 of the same "Foraker Act" for the Philippines of July 1, 1902, the federal

> "laws relating to entry, clearance and the manifests of steamships and other vessels arriving from or going to foreign ports,"

and

> "all laws relating to the collection and protection of customs duties not inconsistent with the Act of Congress of March 8, 1902, 'Temporarily to provide revenue for the Philippine Islands',"

and also the

> "laws relating to seamen on foreign voyages,"

and

> "The provisions of chapters 6 and 7, Title 48, Revised Statutes, so far as now in force, and any amendments thereof,"

and likewise

> "the provisions of law relating to public health and quarantine,"

were specifically extended to vessels engaged in voyages

between the Philippine Islands and "the United States and the possessions thereof." (Appendix I, *ante*, pp. 55-56).

(3) By the Act of February 9, 1903, c. 529, 32 Stat. 806, Section 1014 and also Sections 5278 and 5279 of the Revised Statutes, "so far as applicable," were expressly extended to the Philippine Islands (Appendix I, *ante*, pp. 51-52).

(4) By the Act of February 6, 1905, c. 545, 33 Stat. 698, Sections 5270, 5271, 5272, 5273, 5274, 5275, 5276, and 5277, and also Sections 5409 and 5410, of the Revised Statutes, "so far as applicable," were specifically extended to the Philippine Islands. (Appendix I, *ante*, p. 52).

(5) In the Narcotic Act of December 17, 1914, 38 Stat. 785, 787, the Congress specifically and definitely indicated its intention that that Act should run to the Philippine Islands by providing (Sec. 2) that in "the Philippine Islands administration of this Act" shall be looked after by the local internal revenue officers, and further that "the Courts of First Instance in the Philippine Islands shall possess and exercise jurisdiction in all cases arising under this Act in said Islands." (*Confer, Opinion of the Attorney General concerning the Narcotic Drugs Import and Export Act of 1922*, 34 Ops. Atty.-Gen. 550, 551-553; *quoted ante*, pp. 25-26).

B. ENACTED SINCE THE PASSAGE OF THE PRESENT ORGANIC ACT FOR THE PHILIPPINE ISLANDS, THE "JONES LAW" OF AUGUST 29, 1916.

(1) By Section 23 of the Income Tax Act of September 8, 1916, c. 463, 39 Stat. 756, 776,[1] the Congress specifically extended the Income Tax Act to the "Philippine Islands". (*Anter*, p. 25; *quoting the opinion of the Attorney General*

[1] *The very next day after the passage of the amendment* of September 7, 1916, *to Section 25 of the Federal Reserve Act*, c. 461, 39 Stat. 752, 755 (*ante*, pp. 29-30; Appendix I, *ante*, p. 59), which had employed simply the words "dependencies or insular possessions," without specifically mentioning the Philippine Islands. (*Confer, ante*, pp. 29-30).

*concerning the* Narcotic Drugs Import and Export Act, *supra,* 34 Ops. Atty. Gen. 550, 551-553).

(2) By the Immigration Act of February 5, 1917, c. 29, 39 Stat. 874, 875, it was specifically provided that "this Act shall be enforced in the Philippine Islands by officers of the general government thereof." (*Ante,* p. 26, *quoting the opinion of the Attorney General concerning the* Narcotic Drugs Import and Export Act, *supra,* 34 Ops. Atty. Gen. 550, 551-553).

(3) By the National Defense Act as amended by the Act of June 15, 1917, c. 30, 40 Stat. 217, 231, the Congress specifically conferred upon the "Courts of First Instance in the Philippine Islands" jurisdiction of offenses under that Act committed within the Philippines, and by the same Act specifically provided that the insular district attorneys of the Philippine Islands "shall have the powers and perform the duties provided in this Act for United States Attorneys," thereby specifically expressing the Congressional will that that Act should run to the Philippine Islands. (*Ante,* p. 25, *quoting the opinion of the Attorney General in the matter of the* Narcotic Drugs Import and Export Act, *supra,* 34 Ops. Atty. Gen. 550, 551-553).

(4) In the Trading With the Enemy Act of October 6, 1917, c. 106, 40 Stat, 411, 425, the Congress specifically provided that "the several Courts of First Instance in the Philippine Islands shall have jurisdiction of offenses committed" under that Act within their territory, thus once more specifically indicating the express Congressional will that that particular Act should run to the Philippine Islands. (*Ante,* p. 26, *quoting the opinion of the Attorney General in the* Narcotic Drugs Import and Export Act *matter, supra,* 34 Ops. Atty. Gen. 550, 551-553.)

(5) Quite recently, when the Congress determined to extend to the Philippine Islands the 15% cut in the salaries of insular officials appointed by the President, it specifically named the Philippine Islands in the Act, directing (Inde-

pendent Offices Act of June 16, 1933, c. 101, Sec. 12, 48 Stat. 283, 307; *ante*, p. 23):

"Sec. 12. From the date of the approval of this Act and until July 1, 1934, the compensation of all officers and employees of the insular possessions of the United States, *including the Philippine Islands*, which is now fixed by Acts of Congress * * *, is hereby reduced fifteen per centum:" (*Italics supplied*).

## APPENDIX V

### OPPOSITE CONGRESSIONAL POLICIES WITH RESPECT TO PUERTO RICO ON THE ONE HAND, AND THE PHILIPPINES ON THE OTHER HAND

TREATY OF PEACE WITH SPAIN, signed at Paris December 10, 1898; ratification advised by the Senate, February 6, 1899; proclaimed April 11, 1899.

ARTICLE IX "* * * The civil rights and political status of the native inhabitants of the territories hereby ceded to the United States shall be determined by the Congress" (30 Stat. 1754, 1759).

CONSTITUTION

ARTICLE IV, Section 3, Clause 2 "The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territories or other Property belonging to the United States."

| PHILIPPINES | PUERTO RICO |
|---|---|
| *Senate Resolution upon advising ratification of the Treaty, debated February 6, 1899, passed February 14, 1899* (Cong. Rec. Vol. 32; Part 2, pp. 1479, 1480, 1487, 1846, 1847-1848) | *No corresponding resolution; nothing of that kind.* |
| "*Resolved by the Senate and House of Representatives of the United States of America in Congress Assembled,* That by the ratification of the treaty of peace with Spain it is not intended to incorporate the inhabitants of the Philippine Islands into citizenship of the United States, nor is it intended to permanently annex said islands as an integral part of the territory of the United States; but it is | |

the intention of the United States to establish on said islands a government suitable to the wants and conditions of the inhabitants of said islands to prepare them for local self government, and in due time to make such disposition of said islands as will best promote the interests of the citizens of the United States and the inhabitants of said islands."

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PHILIPPINES

*"Foraker Act", first Organic Act, July 1, 1902* (c. 1369, sec. 1, 32 Stat. 691):

"The provisions of Section 1891 of the Revised Statutes of 1878[1] shall not apply to the Philippine Islands."

[1] Section 1891 of the Revised Statutes is the section extending, generally, "The Constitution and all laws of the United States which are not locally inapplicable" to the Territories; *ante*, Appendix I, p. 47, foot-note 1.

PUERTO RICO

*"Foraker Act", first Organic Act for Puerto Rico,* Act of April 12, 1900 (c. 191, sec. 14, 31 Stat. 77, 80):

"The statutory laws of the United States not locally inapplicable, except as hereinbefore or hereinafter otherwise provided, shall have the same force and effect in Porto Rico as in the United States, except the internal-revenue laws."

---

PHILIPPINES

*"Jones Law", the second (present) Organic Act of August 29, 1916,* c. 416, 39 Stat. 545:

PREAMBLE

"Whereas it was never the intention of the people of the United States in the incipiency of the War with Spain to make it a war of

PUERTO RICO

*"Jones Law", the second (present) Organic Act for Puerto Rico, March 2, 1917,* c. 145, 39 Stat. 951.

*No corresponding preamble or other provision. Nothing of that kind at all.*

conquest or for territorial aggrandizement; and

"Whereas it is, as it has always been, the purpose of the people of the United States to withdraw their sovereignty over the Philippine Islands and to recognize their independence as soon as a stable government can be established therein; and

"Whereas for the speedy accomplishment of such a purpose it is desirable to place in the hands of the people of the Philippines as large a control of their domestic affairs as can be given them without, in the meantime, impairing the rights of sovereignty by the people of the United States in order that, by the use and exercise of popular franchise and governmental powers, they may be better prepared to fully assume the responsibilities and enjoy all the privileges of complete independence."

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PHILIPPINES

*"Jones Law", Act of August 29, 1916, supra:*

"Sec. 2. That all inhabitants of the Philippine Islands who were Spanish subjects * * * and their children * * * shall be deemed and held to be citizens of the Philippine Islands, except such as * * *: *Provided,*

PUERTO RICO

*"Jones Law", Act of March 2, 1917, supra:*

"Sec. 5. That all citizens of Puerto Rico, * * * and all natives of Puerto Rico who were temporarily absent from that island on April 11, 1899, and have since returned and are permanently residing in that island, and

That the Philippine Legislature * * * is hereby authorized to provide by law for the acquisition of Philippine citizenship * * *.

are not citizens of any foreign country, are hereby declared, and shall be deemed and held to be **citizens of the United States.**

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PHILIPPINES

*"Jones Law", Act of August 29, 1916, supra:*

"Sec. 5. That the statutory laws of the United States hereafter enacted shall not apply to the Philippine Islands, except when they specifically so provide, or it is so provided in this Act."

PUERTO RICO

*"Jones Law", Act of March 2, 1917, supra:*

"Sec. 9. That the statutory laws of the United States not locally inapplicable, except as hereinbefore or hereinafter otherwise provided, shall have the same force and effect in Porto Rico as in the United States, except the internal-revenue laws."

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PHILIPPINES

*"Jones Law", Act of August 29, 1916, supra:*

Section 7, after giving the Philippine Legislature power "when not inconsistent with this Act, by due enactment" to "amend, alter, modify or repeal, any law, civil or criminal, continued in force by this Act, as it may from time to time see fit," contains the following express provision, *most unusual in a territorial Organic Act:*

> *"This power shall specifically extend,* with the limitation herein provided as to the tariff, *to all laws relating to revenue and taxation in effect in the Philippines."* (*Ante,* Ap-

PUERTO RICO

*"Jones Law", Act of March 2, 1917, supra:*

*No corresponding special provision.*

The corresponding section, Sec. 57, containing the corresponding general grant of power to the Puerto Rican Legislature "to amend, alter, modify, or repeal any law or ordinance, civil or criminal, continued in force by this Act, as it may from time to time see fit", *entirely omits any such special provision* with reference to "laws relating to revenue and taxation." It contains nothing of the kind. (*Ante,* pp. 18-19.)

pendix I, p. 48; *italics supplied.*)

| PHILIPPINES | PUERTO RICO |
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| *Sections of the Revised Statutes and other laws of the United States which the Congress desires to have run to the Philippines are* EXPRESSLY EXTENDED *to those Islands by Acts of Congress from time to time;* as for example, Act of February 9, 1903, c. 529, 32 Stat. 806, specifically extending sections 1014 and 5278 and 5279 of the Revised Statutes to the Philippine Islands "so far as applicable"; and Act of February 6, 1905, c. 454, 33 Stat. 698, *"An Act to Extend Certain Provisions of the Revised Statutes of the United States to the Philippine Islands";* and other Acts collated in Appendix IV, *ante,* pp. 80-83. | TO THE EXACT CONTRARY. *Laws of the United States not desired to run to Puerto Rico are* EXPRESSLY EXCEPTED *by the Congress from the effect of the general language of Section 9 of the Puertan Rican Organic Act, supra, and are expressly directed* NOT TO RUN TO PUERTO RICO; as for example, the second paragraph of Section 38 of the Organic Act for Puerto Rico (39 Stat., at p. 964) directing that:<br>"The Interstate Commerce Act and the several amendments * * * the safety-appliance Acts * * *, and the Act of Congress entitled, * * *, shall not apply to Puerto Rico." |
| PHILIPPINES | PUERTO RICO |
| *Separate coinage laws* (the peso instead of the dollar); *separate tariff laws;* and *separate immigration laws* (with power in the Philippine Legislature, with the approval of the President individually, to amend the tariff laws and the immigration laws for those Islands); *a separate Philippine customs service,* with a separate insular Collector of Customs; *separate banking laws* | *No such separate provisions; nothing of that kind at all.*<br>The United States currency is the currency of Puerto Rico, as it is of the mainland; the United States tariff laws, immigration laws, and coastwise shipping laws are in force in Puerto Rico; NO separate government bank has ever been authorized for that Island. |

*authorizing the Philippine Legislature to guarantee the income on the capital stock of a Philippine government bank* (the Agricultural Bank, now the Philippine National Bank); and *separate navigation laws* (the coastwise shipping laws of the United States not extended to the Philippines).

(See Acts of Congress collected in Appendix I, *ante*, pp. 49-56).

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PHILIPPINES

*Important Acts of Congress held not to run to the Philippine Islands, although containing language broadly directing that they run to all the territories and every place under the "control or jurisdiction" of the United States, or like expressions, where the Congress had not seen fit to insert words "specifically" mentioning the Philippine Islands:*

1. "The Volstead Act", National Prohibition Act, 32 Ops. Atty. Gen. 258, 259.
2. The Narcotic Drugs Act; 34 Ops. Atty. Gen. 550, 551-553.
3. The National Industrial Recovery Act, Ops. Atty. Gen., Advance Sheets, December 2, 1933.

PUERTO RICO

*No such decisions at all.*

(See as to above opinions of the Attorneys General, *ante*, pp. 24-26).

| PHILIPPINES | PUERTO RICO |
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| *Independence Act* of March 24, 1934, c. 84, 48 Stat. 456, under which the new "Commonwealth Government" of the Philippines is being organized; contemplating complete political independence in about ten years. | *Nothing of the kind.* |

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1935

## No. 114

JUAN POSADAS, JR., Collector of Internal Revenue of the Philippine Islands, *Petitioner*,

vs.

THE NATIONAL CITY BANK OF NEW YORK, *Respondent*.

## REPLY BRIEF FOR PETITIONER

### I

Respondent's brief is noteworthy for what it does not say. It attempts no direct answer to petitioner's arguments. It attempts merely to ignore them or to evade the necessary consequences.

It makes no direct reply whatever to Point I of our brief (pp. 11-34) that: "Neither the taxing section of the National Bank Act nor any other part of that Act, nor Section 25 of the Federal Reserve Act, runs to the Philippine Islands". Impliedly it admits the correctness of our position. It does not question the correctness of our Point II (*brief*, pp. 33-34) that: "There is no federal statute limiting the general taxing power of the insular government

over Philippine branches of national banks of the United States, or over any other banks in those Islands, except the provision of Section 3 of the Organic Act that 'the rule of taxation in said Islands shall be uniform' ". Manifestly that statement cannot be questioned. It attempts no direct reply to Point III of our brief (pp. 34-42) that: "There is no implied prohibition preventing the Philippine government from levying these taxes, or collecting them"; nor does it question our arguments under that Point, which compel that conclusion. It attempts merely to say (*Respondent's Brief*, pp. 7-10) that the implied consent of the Congress or the intention of the Congress implied from all its Acts is not enough, but that the Congress, as to this particular matter, may act only by "express" enactment in so many words;—an impossible position (*infra*, pp. 10-12). It makes no reply to Point IV (pp. 43-44) of our brief that: "The Congress, by Section 6 of the present Organic Act for the Philippines, expressly ratified the sections of the Philippine Administrative Code under which the taxes here involved were imposed." *Respondent has nothing whatever to say in answer to that proposition,* which is believed in itself to be conclusive in favor of the validity of these taxes. And it does not directly question the correctness of Point V of our brief (pp. 44-46) that: "There is no federal statute authorizing the establishment of branches of United States national banks in the Philippine Islands".

II

Respondent says (*Brief*, p. 3) that "*the question of whether the National Bank Act or the Federal Reserve Act extend to the Philippine Islands is not involved*". Substantially the brief admits that neither of those Acts runs to the Philippines. But Respondent says (*brief*, p. 18):

> "It has no bearing whatever on the question whether, by Section 25 of the Federal Reserve Act, *the charter powers of national banks,* having the required amount

of capital, were extended so as to authorize them to open branches in dependencies of the United States including the Philippine Islands." (*Italics are respondent's own*)

*Non sequitur.* It is immaterial from what particular angle the effect of Section 25 of the Federal Reserve Act be viewed, and whether or not it be looked at as an extension of the charter powers of national banks, or as a grant of governmental power to the Federal Reserve Board with a corresponding command to the governments of the "insular possessions" to respect that power,—or from either or all of these angles, or in any other way. In any event, it expresses the measure of the power of the Federal Reserve Board to grant the license, and, correspondingly, the measure of the power of the bank to act under it and to establish branch banks outside of the continental United States. Except for that section there is no such power, either as a charter power of the bank, or as a governmental power of the Federal Reserve Board. Except for that section the charter powers of the bank do not extend to the opening or maintenance of any branch outside of the particular State (or Territory) within whose limits the parent bank is located. It necessarily follows that, since Section 25 of the Federal Reserve Act does not run to the Philippines, therefore it does not contain any grant to the bank of any extension of its charter powers to open or to maintain any branches there, any more than it contains any grant of governmental power to the Federal Reserve Board to give any permit or license for the maintenance of any such branch there. It is as broad as it is long.

III

And the same thing applies to respondent's contention (*Brief*, pp. 3, 18), that the question whether the National Bank Act extends to the Philippine Islands "*is not involved*", or "*has no bearing whatever on the ques-*

*tion here presented''*, of the power of the Philippine government to tax these banks located at Manila and Cebu in the Islands. Respondent does not explain how it arrives at that conclusion. The question whether or not the taxing section of the National Bank Act, or Section 25 of the Federal Reserve Act, runs to the Philippine Islands is in fact the gist of this whole case. If they ran there, then, of course, as this court held in the Puerto Rican case, *Domenech* vs. *National City Bank*, 294 U. S. 199, last February, it would follow that these banks at Manila and Cebu would really be, legally, branches of a national bank of the United States, and would be taxable only under the taxing section of the National Bank Act; and the taxing powers given by the Congress by the Organic Act to the Philippine Legislature would be limited by the express provisions enacted by the Congress itself in the taxing section of the National Bank Act. But, since neither the Federal Reserve Act nor the National Bank Act extends to the Philippines, there is no legal basis whatever for considering those Manila and Cebu banks as being in any statutory sense ''branches'' of a national bank of the United States, or as being ''instrumentalities'' of the federal government in any way; and, of course, since the taxing section of the National Bank Act is not in force in the Philippines, it does not affect or limit in any way the taxing powers granted by the Congress to the Philippine Legislature by the Organic Act. So far as this case is concerned, it is as though neither the National Bank Act nor the Federal Reserve Act had ever been enacted. Those banks at Manila and Cebu stand before the Philippine government in precisely the same situation as though they had been established there by a bank chartered under the laws of the State of Iowa, or of Illinois, or of New York,—or of the Province of Quebec, or the Dominion of Canada.

IV

Respondent's only direct attempt to answer our position

that neither the National Bank Act nor the Federal Reserve Act has ever been extended to the Philippine Islands, is contained in its statements (*Brief*, p. 15) that the Federal Reserve Act contains authority to establish branches in "foreign countries *or dependencies* of the United States", amended by the amendatory Act of September 9, 1916, to read "foreign countries or *dependencies or insular possessions* of the United States", in those general words,—omitting any reference to the Philippine Islands,—as we have already pointed out (*Petitioner's Brief*, pp. 28-33); and that (*Respondent's Brief*, p. 16) the Philippine Islands were ceded to the United States by the Treaty of Peace with Spain, and are, of course, in the general category of "dependencies or insular possessions" of the United States; from which respondent concludes baldly (*Brief*, p. 17) that:

> "By the expression 'foreign countries or dependencies or insular possessions of the United States' National Banks were authorized to open branches anywhere in the world outside of the continental United States;"

and that:

> "The petitioner's contention would require that this general grant of power should be restricted by implication so as to read 'in foreign countries or dependencies or insular possessions of the United States *except in the Philippine Islands*'. Such a limitation will not be read into a statute by the courts";

and then respondent proceeds to argue (*ib.* p. 17) that the fact that the Federal Reserve Board granted the license in 1930 to open these branch banks in Manila and Cebu, and that (as respondent says) the Comptroller of the Currency has required reports and makes examinations of them, "are administrative interpretations of the Federal Reserve Act which are entitled to great respect".

But all of that is simply an attempt baldly to ignore and to avoid answering the arguments contained in Point I (pp. 11-34), and particularly in sub-paragraphs A (pp. 12-14), D (pp. 16-18), G, H and I (pp. 24-27), and K and L (pp. 28-33), and in Point V (pp. 44-46) of our brief, which conclusively show that the Congress has in fact never extended the Federal Reserve Act to the Philippine Islands, and that it has never been in force there, any more than the National Bank Act, or any other general statutory law of the United States which the Congress has not chosen to extend to the Philippines. Respondent attempts no direct answer to those arguments. It does not question the correctness of our premises, nor directly question the soundness of our conclusions. Respondent merely says, as above quoted, that petitioner's contention "would require that this general grant of power" to the Federal Reserve Board to grant licenses to establish branches of national banks in "dependencies or insular possessions" *"should be restricted by implication"*, so as to read "dependencies or insular possessions of the United States *except in the Philippine Islands"*, and that *"Such a limitation will not be read into a statute by the courts"*. (*Italics supplied*)

But respondent here wholly ignores the plain facts pointed out in our brief (pp. 12-27) that the Congress itself, both by Section 5 of the present Organic Act for the Philippine Islands and by Section 1 of the previous Organic Act, the "Foraker Act" for those Islands, has expressly directed that that very limitation be read into every general Act of Congress which does not "specifically" provide that it shall apply to those Islands. And respondent attempts likewise cavalierly to dispose of the opinions of the Attorney General applying that rule of interpretation of the Congress itself to the Volstead Act, to the Narcotic Drugs Import and Export Act, and to the National Industrial Recovery Act, and holding that because of it they did

not run to the Philippines (*our brief*, pp. 23-27) by saying only (*Respondent's Brief*, p. 18):

> "The various rulings of Attorneys General, cited by petitioner, that certain sumptuary and regulatory Acts of Congress, such as the Volstead Act, the Narcotic Drugs Act and the National Industrial Recovery Act do not extend to the Philippines also have no bearing on those questions."

Of course it is just immaterial whether or not those Acts are, as counsel call them, "sumptuary and regulatory", or whether they related to finances, or to imports, or whatnot. The Attorney General's opinions were not at all based on the character of the particular Acts, but solely on the ground that the Congress had directed that none of its general Acts should apply to the Philippine Islands, unless it had itself "specifically" so directed.

Respondent admits (*Brief*, pp. 17-18) the correctness of the statement in our brief (pp. 30-31, 32) that during all the years since the first enactment of the Federal Reserve Act in 1913, up to the year 1930, when the license was granted to this respondent for these "branch" banks in Manila and Cebu, the Federal Reserve Board had never granted an application for any branch of a national bank in the Philippine Islands. But respondent says that the force of that fact, as a contemporaneous administrative construction of Section 25 of the Federal Reserve Act as not running to the Philippines, is broken (as respondent claims; brief, p. 18) by

> "the further fact, stated by petitioner (Brief, p. 32), that no such application was made to the Federal Reserve Board prior to the respondent's application in 1930."

Passing by the fact that we fail to find any such statement either on page 32 or elsewhere in our brief, it seems

wholly immaterial whether any such application was ever made to the Federal Reserve Board, or not. If none was ever made, then that would seem rather to add to the weight of the argument that it was the unanimous contemporaneous interpretation of the Act,—and that it was so understood by the banks themselves, as well as by the Board,—that the Congress did not intend Section 25 of the Act to apply to the Philippines.

## V

Respondent also says on page 17 of its brief that:

> "*No reason is suggested* why the Philippine Islands alone, of all the places subject to the jurisdiction of the United States, should be deprived of the services of National Banks." (*Italics supplied*)

This is again an attempt to overlook and to ignore everything said in our brief as to the purposes and the policy of the Congress with relation to the Philippine Islands, from the very beginning of the American occupation, as to the differentiation of their status from that of the Territories and from that of the other insular possessions of the United States, and particularly with reference to the separate financial policy for the Philippine Islands, the separate coinage and currency laws, the separate monetary unit, and especially the creation and fostering of the separate government bank for the Islands, formerly the Agricultural Bank, now the Philippine National Bank, the income on whose capital stock the Congress specifically authorized the Philippine government to guarantee (Act of March 7, 1907, c. 2908, 34 Stat. 1282; Appendix I to our brief, pp. 52-53), and of which the stock is almost entirely owned by the Philippine government, and which, as pointed out in our brief (pp. 30, 40), is "a truly national bank for the Islands", "an arm of the Philippine government" a governmental agency in a much more real and substantial

sense than are the national banks of the United States (Brief for petitioner, pp. 30, 31-32, 40, 42-43, and Appendix III, pp. 71-79). That room was filled. No other governmental banks were needed there, in the opinion of the Congress.

Respondent ignores all of this; attempts no answer.

VI

Respondent says (Brief, p. 16):

> "This Court has held (*Talbott v. Silver Bow County*, 139 U. S. 438, 443; *Domenech v. National City Bank*, 294 U. S. 199, 204) that Congress intended 'to create a national banking system coextensive with the territorial limits of the United States', and this Court held, in the *Talbott* case, that the National Bank Act extended to the territories, although they were not expressly mentioned in the Act";

but respondent forgets that in both of those cases this court was talking about Territories or an insular possession to which, by the express Act of Congress, the general laws of the United States not locally inapplicable had been extended, so that they ran there with the same force as within the States. In the *Talbott* case, the Territory of Montana, to which both the Constitution and the general laws of the United States ran, so that it was fully "incorporated" into the Union (Organic Act for Montana, Act of May 26, 1864, c. 95, Sec. 13, 13 Stat. 85, 91, Petitioner's brief, Appendix II, p. 70; and Section 1891 of the Revised Statutes of 1873 and 1878, our brief, pp. 20-21, 47); and in the *Domenech* case, Puerto Rico, to which this court there held that the National Bank Act as well as the Federal Reserve Act ran, by virtue of the provision of Section 9 of the Organic Act for that Island (Act of March 2, 1917, c. 145, 39 Stat. 951, 954; Petitioner's brief here, Appendix V, p. 87) that the statutory laws of the United States not

locally inapplicable "shall have the same force and effect in Puerto Rico as in the United States, except the internal revenue laws".

Here again respondent is simply attempting to ignore the whole distinction between the status of the Philippine Islands on the one hand, and that of the Territories and other possessions of the United States on the other hand, and the purposes and the policies of the Congress underlying the distinction. As noted in our brief (p. 28, footnote 13), the Congress has not extended that "national banking system" to the Philippines. It established another system there, a government bank, now the Philippine National Bank.

## VII

Respondent (*Brief*, pp. 7-8) questions the correctness of our statement on page 35 of our brief that:

> "The presumption that a derivative sovereignty is not intended to tax instrumentalities of the superior sovereign, is after all only a rebuttable presumption; and, like other rebuttable presumptions, is to be used only as an aid in arriving at the true facts,—here as an aid in arriving at the real intent of the Congress",

and contends (*Respondent's brief*, Point "Second") that

> "The respondent, being a government instrumentality, is not subject to taxation by States *or dependencies, unless the power is expressly granted by Congress*". (Respondent's Heading, Point "Second", p. 7; *Italics supplied*).[1]

[1] But the respondent says, contradictorily, (*Brief*, p. 3) that,

> "The question whether there is any implied prohibition against the taxation of branches of a national bank by the Philippine government is not involved."

As applied to the present case, that statement carries the unwarranted assumption that the banks here involved in Manila and Cebu, upon which the Philippine government levied these taxes, are actually "national banks", or that they are, within the meaning of Section 25 of the Federal Reserve Act, actually and legally branches of the respondent, as a national bank of the United States; which they are not, because Section 25 of the Federal Reserve Act does not apply to the Philippines, and never did. Those banks in Manila and Cebu do not in reality exist by reason of any authority derived from their supposed license by the Federal Reserve Board under that Act; and, therefore, they are not, in any legal sense, "government instrumentalities" of the United States, or statutory "branches" of the respondent as a national bank of the United States in such a sense that the Philippine levy of taxes upon them should be treated as a levy of taxes on the respondent itself.[2]

Of course if the taxing section of the National Bank Act really ran to the Philippines, then as we have already noted (*ante*, III, p. 4), the express limitation which it contains would restrain the general taxing power given the Philippine Legislature by the Organic Act, and that limitation could be removed only by act of Congress, either expressly so providing in so many words, or else carrying a clear implication of the intention of the Congress to remove the limitation.

[2] What the private business relations between the respondent in New York and these Manila and Cebu banks may be, is wholly immaterial here. We are concerned only with the legal status of those so-called "branches", and with their relations to the Philippine government. For the purposes of this case, it is enough to know that they are not legally "branches" of a national bank of the United States under Section 25 of the Federal Reserve Act; and, therefore, are not entitled to the privileges of statutory "instrumentalities" of the federal government.

But that has nothing to do with the situation here involved, where, the taxing section of the National Bank Act not being in force in the Philippines, there is no federal statute in force there limiting the general taxing power of the insular government, either over Philippine branches of national banks of the United States or over any other banks in those Islands, except the provision of Section 3 of the Organic Act that "the rule of taxation in said Islands shall be uniform". (Point II, pp. 33-34, of our brief). The sentence which respondent quotes (*ante*, p. 10) from page 35 of our brief is a part of our statement of our position in support of Point III (pp. 34, *et seq.*) of our brief, that, in the absence of any such express limitation by the Congress upon the general power of taxation given to the Philippine Legislature by the Organic Act, "*There is no implied prohibition preventing the Philippine government from levying these taxes, or collecting them.*" Respondent's position, to the contrary, is that, even under such circumstances, there is implied an absolute prohibition which can be removed only by express language in an Act of Congress. In taking that position they appear to confuse the rule,—and the reasons for the rule,—relating to the sovereign States, with the rule relating to the Territorial or insular governments which are themselves only instrumentalities of the Congress (*Farmers Bank vs. Minnesota*, 232 U. S. 516, 524), wholly subject to its will and to be directed wholly by it in any way the Congress may see fit at any time, whether by express direction in so many words, or by necessary implication from its Acts. So that, as is said on page 35 of our brief:

> "It comes back, therefore, to the question, simply, what was the intention of the Congress?"

As we have said, respondent appears to confuse the character of the Territorial or insular governments with that

of the sovereign States. Respondent says (*Brief*, p. 8)

> "The inability of a state, territory or dependency to tax the instrumentalities of the sovereign is not based upon *presumption*, but is due to a complete lack of capacity to tax such instrumentalities. The power to tax is a power to retard, impede, burden or destroy; and, since *M'Culloch v. State of Maryland* (4 Wheat. 316), it has been the law of this country that states or dependencies cannot tax National Banks, since they are instrumentalities of the United States Government" (*Italics respondent's own*);

and that (*Brief*, p. 9):

> "While that principle was originally declared only with reference to the States, *it was later extended to the territories*" (*Italics supplied*),

citing to that last statement, as to the territories, *Talbott v. Silver Bow County*, 139 U. S. 438, 441.

BUT IN FACT THE TALBOTT CASE HOLDS EXACTLY TO THE CONTRARY. *It holds, directly, that the taxing power may be given to the Territory, an instrumentality of the Congress, by implication, and may be implied in an appropriate case from lack of express prohibition against it, in connection with the general grant of taxing power to the Territorial legislature.* Precisely the rule upon which we rely here. In that case this court upheld a statute of the Territory of Montana providing for an *ad valorem* tax upon all property in the Territory, and held it applicable to a national bank organized in the Territory. The same argument appears to have been made there against the validity of the Territorial statute that the respondent makes here, viz., that it was not supported by any "express" grant of power by the Congress to the Territorial Legislature to tax national banks, and that they were instrumentalities of the national government, and hence protected by the

same rule of inability to levy any tax upon them which Chief Justice Marshall had laid down in *M'Culloch v. Maryland* as depriving the sovereign States of any power to levy such taxes. But this court replied (*Talbott v. Silver Bow County, supra,* 139 U. S. 438, 445-446):

> "But the argument does not rest here. Upon what principle is the power of a State to tax a national bank, without the consent of Congress, denied? The answer to this question was fully given by Chief Justice Marshall in the cases of *McCulloch v. Maryland and Weston v. Charleston, supra.* Briefly stated, the argument was this: Two distinct sovereignties, the State and the United States, exercise jurisdiction within the same territorial limits. Each has the power of taxation. This power is in its nature absolute and unlimited. Power to tax is power to destroy. Given to the State the power to tax any of the instrumentalities which the United States creates for the exercise of its jurisdiction, and the former may impede, if not wholly stop, the latter in the discharge of its duties as sovereign. Hence, by necessary implication, the absolute exemption from state taxation of any of the instrumentalities —and among them are national banks, which the United States creates for the exercise of its powers and the discharge of its duties. **But the whole argument fails when applied to a Territory.** It is not a distinct sovereignty. It has no independent powers. It is a political community organized by Congress, all whose powers are created by Congress, and all whose acts are subject to Congressional supervision. Its attitude to the general government is no more independent that that of a city to the State in which it is situated, and which has given to it its municipal organization. **Who would contend, in the absence of express legislative provision therefor, that a bank created by or under the laws of a State, and located and doing business in a city of that State, could claim exemption from municipal taxation upon its property? A bank is an institution organized for private business, and with a view to individual profit, although it may serve**

> **a public purpose and such public purpose justify its creation; and no such private corporation has any implied exemption from local taxation by a municipal or political organization in which it is situated.** The only ground on which exemption from such taxation can be based, in the absence of express legislative provision, is that the tax proceeds from a distinct and independent sovereignty. As the reason for the rule of exemption of a national bank from state taxation fails in respect to a bank located in a Territory, the rule also fails."[3]

The rule stated in Point III (pp. 34 *et seq.*) of our original brief is correct. Respondent fails to notice that we have there already replied in effect (pp. 35-36) to what respondent now says (*Brief*, p. 9) in relation to the effect of the decision of this court last February in the Puerto Rican case of *Domenech v. National City Bank*, 294 U. S. 199. Respondent contends (*Brief*, p. 9) that this court held in that case, in effect,

> "that the insular possessions and dependencies of the United States have no power to tax national banks un-

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[3] It is true that in that case this court also upheld the Territorial statute of Montana on another wholly different independent ground, viz., that the taxing section of the National Bank Act ran also to the Territories and, therefore, constituted an express grant of power to the Territorial Legislature to levy the tax in question (*Talbott v. Silver Bow County, supra*, 139 U. S. at pp. 441-445). But that fact does not militate in any way against the authority of that portion of the decision above quoted, resting on the separate second ground (*supra*, at pp. 445-446). The conclusion of this court was rested upon *both grounds*. The court's conclusion was (at p. 446):

> "*From these several considerations* we conclude that there was no error in this ruling of the Supreme Court of the Territory of Montana, and that the same power of taxation in respect to national banks exists in the Territories that does in the States." (*Italics supplied*)

> less that power has been *expressly* conferred by Congress". (*Italics supplied*).

But, of course, as pointed out in the quotation from that case (at p. 205) on pages 35 to 36 of our brief, this court was there careful to state that in that case, in relation to Puerto Rico,

> "we are confronted by R. S. 5219" (*the taxing section of the National Bank Act*), "which *proprio vigore* extends to Territories, and the Congressional declaration that it, like other statutes of the United States shall, if not locally inapplicable, apply to Puerto Rico".

That marks the differentation.

VIII

Respondent contends (*Brief*, p. 14) "The respondent is actually in the Philippines, doing business under a permit granted by the Federal Reserve Board", and that: "If the respondent has exceeded in any way the powers granted to it by law, the remedy provided by the National Bank Act (R. S. Sec. 5239, 12 U. S. C. A. Sec. 93) is 'a suit brought for that purpose by the Comptroller of the Currency in his own name' in a district or territorial court of the United States".

But (1) That section of the National Bank Act has not been extended to the Philippines, any more than any other parts of that Act. (2) In any event, that statutory remedy is only for cases where the directors of a validly existing national bank of the United States have caused or permitted some violation of the provisions of the National Bank Act, subjecting the bank to forfeiture. This is not such a case at all. The question here is whether or not these Manila and Cebu banks are entitled to claim any rights whatever, or any existence, either under the Federal Re-

serve Act or under the National Bank Act. And (3) Respondent is evidently thinking of this case as though it were a prosecution of the bank by the Philippine government; whereas the reverse is true. This was an action brought by the bank itself (Complaint, R. 2-7) against the Collector in his official capacity, — substantially a suit against the Philippine government itself (*Smith v. Reeves,* 178 U. S. 436, 438-440), which is at least *quasi* sovereign (*Porto Rico vs. Rosaly,* 227 U. S. 270, 274-277),—to recover from it, as defendant, taxes alleged by the plaintiff bank to have been improperly paid. In defending itself the Philippine government is, of course, entitled to show in its defense that it does not owe the money, because these Manila and Cebu banks are not in reality "branch banks" existing under Section 25 of the Federal Reserve Act or any other federal law; and, therefore, are not entitled to the privileges of "instrumentalities" of the federal government. For such a defense, the Philippine government does not have to travel the round-about route of a suit in *quo warranto.*

## CONCLUSION

The judgments of the Supreme Court of the Philippine Islands and of the Court of First Instance of Manila should be reversed and the case remanded with directions to dismiss the action at the plaintiff bank's costs, for the reasons stated in the brief for the petitioner.

Respectfully submitted,

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*Of Counsel.*

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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1935

## No. 114

JUAN POSADAS, JR., Collector of Internal Revenue of the Government of the Commonwealth of the Philippine Islands,
*Petitioner,*

vs.

THE NATIONAL CITY BANK OF NEW YORK,
*Respondent.*

SUPPLEMENTAL MEMORANDUM FOR THE PETITIONER, UPON QUESTIONS OF THE COURT AT THE ARGUMENT

I

In answer to the question of the Chief Justice near the closing on Wednesday, December 11th, as to who may raise this question of the power of this plaintiff, or of its character as a federal instrumentality in the Philippine Islands, the answer is that it may be raised by the local sovereign by way of defense when sued, as here, for money in a case where the plaintiff rests its supposed right of recovery on its character as a federal instrumentality in the Islands; and the defendant, the local sovereign, denies it. Plaintiff

sues for the recovery of moneys now in the Philippine treasury paid under protest as taxes,—capital taxes and deposits taxes,—on this local bank in Manila, and says in its complaint, as the basis of its right of recovery (R. 2), that as a national bank of the United States it is authorized to do business in the Philippine Islands and that, as such a national bank, it is, in the Philippine Islands, an instrumentality of the United States. The defendant government, the local sovereign, denies that, by its answer denying "generally and specifically each and every allegation contained in said complaint" (R. 8) and in its assignment of errors from the Trial Court to the Philippine Supreme Court, says (R. 141) that the Trial Court—

> "erred in holding that the branch of the National City Bank of New York in Manila, Philippine Islands, is an instrumentality of the United States Government".

That directly raises the question. Plaintiff sues the local sovereign for the recovery of these taxes which had been collected and are now in the government treasury, basing its right of recovery on its alleged character as a federal instrumentality "in the Philippine Islands". The defendant government denies that it is such an "instrumentality". That makes a direct issue. That denial of the allegation on which plaintiff bases its right of recovery is not a collateral attack upon its corporate existence within the meaning of the rule concerning collateral attack; which, as this court has stated it (*Baltimore & Potomac R. R. Co.* v. *Fifth Baptist Church*, 137 U. S. 568, 571-572), is that *de facto* corporate existence,

> "is all that is necessary to enable it to maintain an action against any one, *other than the State*, who has *contracted with* the corporation, or who *has done it a wrong*". (*Italics supplied*)

But this *is an action against the State;* and it is not based upon any contract, nor is it an action for tort or injury

suffered by the plaintiff; but it is an action against the State to recover moneys in the State treasury, based upon plaintiff's alleged character as a "federal instrumentality", which the State, the local sovereign, denies.

It is settled, of course, that a suit such as this against the Collector, the purpose of which is to reach moneys in the government treasury, is a suit against the government itself. *Smith* v. *Reeves,* 178 U. S. 436, 438-439. The defendant, the Philippine Government, is at least "*quasi*-sovereign", so that it may not be sued without its own consent. *Puerto Rico* v. *Rosahy,* 227 U. S. 270, 274-277. And this suit for the recovery from the government treasury of money paid under protest for taxes is based upon the Philippine government's own consent in Section 476 of the Philippine Administrative Code, Philippine Act No. 2711; and could not be maintained without such consent. Except as its powers are limited by Act of Congress, the Philippine Government by delegation from the Congress possesses all of the powers of local sovereignty as much as a State government. *America Insurance Co.* v. *Canter,* 1 Pet. 511. It is a completely organized government possessing all of the essential governmental powers. By section 21 of the Organic Act, "the supreme executive power" in the Islands is vested in the Governor General; the "general legislative power, except as herein otherwise provided" (Secs. 8, 12) is vested in the Philippine Legislature; and the local judicial power is vested in the insular Supreme Court and courts of first instance (Secs. 26 and 27). The general taxing power is vested in the local legislature both under the grant of "general legislative powers" and by express grant of the taxing power (Sec. 11), and the provision (Sec. 7) that the legislative authority thus granted

> "shall specifically extend * * * to all laws relating to revenue and taxation in effect in the Philippines".

And the Philippine statute under which these taxes were levied and collected, which the plaintiff here seeks to re-

cover back, was itself expressly ratified by the Congress. The taxes were levied under Section 1499 of the Philippine Administrative Code (defendant's answer; R. 8) Act No. 2711 of the Philippine Legislature of March 10, 1917, which was a direct re-enactment of the earlier Section 1654 of the Administrative Code of 1916, Philippine Act No. 2657 of February 24, 1916, effective July 1, 1916, which was in effect in the Philippines on August 29, 1916, the date of the enactment of the Jones Law, the Organic Act of that date, and was, therefore, among *"the laws now in force in the Philippines"* which that Act directs (Sec. 6)

> "shall continue in force and effect, except as altered, amended, or modified herein, until altered, amended, or repealed by the legislative authority herein provided or by Act of Congress of the United States" (*our original brief,* Point IV, pp. 43-44).

Under those provisions, those broad grants by the Congress to the local sovereignty of general legislative and taxing powers, and the specific ratification by the Congress of the local statute under which these particular taxes were levied, the levy of the taxes by the local sovereignty was undoubtdly valid, and the money paid for them into the treasury of the local government could not be recovered back, *unless* there was some limitation by the Congress,—either in express words in an Act of Congress, or by necessary implication from some Act of Congress,—limiting the exercise of those powers in some way, or carving some exception out of them.

Plaintiff alleges that there is such an exception, and that plaintiff comes within the exception. It says that the exception is, that the taxing powers of the local sovereign do not extend to "instrumentalities of the United States" in the Philippine Islands; and it alleges that it is such an "instrumentality of the United States", within those Islands. On that allegation it sues the local government to

recover this money from the Treasury. The local government in defense denies its allegation that the plaintiff is, within those Islands, such an "instrumentality of the United States"; and says that, within those Islands, the plaintiff is not clothed with that character, and hence is not within the alleged exception to the local sovereign's general taxing powers.

That is the issue here presented; and it is submitted that the local government is not in any way estopped to make that defense. It is not a collateral attack on the corporate existence, within the rule forbidding such collateral attack by an individual.

This issue, thus presented, does not, in fact, question the corporate existence, *de facto*, of the banking institutions carried on in plaintiff's name in the Islands. It questions only their *power* to act there in a particular capacity, and whether they are actually clothed with the powers they claim, to act within those Islands as "instrumentalities of the United States". That does not go at all to the question of their corporate existence.

And the rule against collateral attack on the corporate existence has never been extended to prevent questioning,—even by an individual, or in any form of action where the question may come up,—the power of any corporation,—(whether *de facto or de jure*),—to exercise a particular power, or to act in a particular capacity. That is simply a question of *ultra vires*, as distinguished from a plea of *nul tiel corporation*. And there is no rule forbidding any defendant, — an individual defendant, — or *a fortiori* the local sovereign,—when sued by a corporation, from setting up the plea of *ultra vires* in defense,—that the corporation is not clothed with the particular power upon which it bases its right of recovery in this particular case.

The general rule, as stated in Fletcher, Cyclopedia of Corporations, Vol. I, Sec. 277, pp. 549-550, is:

"There is also 'an obvious distinction between a

> challenge to the corporate existence and a challenge to the power which may be exercised by the corporation, whether it be a *de facto* or *de jure* corporation. In the former case the general rule is * * * that the corporate existence may not be attacked collaterally; but it has always been held that the *ultra vires* acts of the corporation may be thus challenged, often by the corporation itself. And this rule would apply as well to a *de facto* corporation as to one *de jure*.
>
> "There is no such thing in law as a *de facto* power. So a contention by heirs of a deceased person that corporations to whom he devised land are religious corporations and hence cannot take such property is not a collateral attack on the existence of such corporations."

That is the only issue presented here; whether this plaintiff is clothed, within the Philippine Islands, with the statutory power, under Section 25 of the Federal Reserve Act, or under the National Bank Act, to act, within the Philippine Islands, as an "instrumentality of the United States" and so to claim exemption from local taxation as such an "instrumentality". Plaintiff alleges that it is, and bases its supposed right of action upon that claim. The defendant government denies that claim, and says that, within those Islands, the Congress has not clothed this plaintiff with those statutory powers as such a "federal instrumentality".

Respondent's suggestion that R. S. 5239 affects this situation in any way, has already been answered in our "Reply Brief" (pp. 16-17). And since the corporation "can do only what is authorized by its charter", and "cannot migrate", although it

> "may exercise its authority in a foreign territory *upon such conditions as may be prescribed by the law of the place*" (*Railroad Co.* v. *Harris*, 12 Wall. (79 U. S.) 65, 81, SWAYNE, J.; *Italics supplied*),

and since its charter powers are limited by the Congress

by the Acts under which it is created, the National Bank Act taken in connection with Section 25 of the Federal Reserve Act, to the limits of the State (New York) where it is located, and to such foreign countries and "insular possessions" to which it may be permitted to go with the license of the Federal Reserve Board—(*but not including the Philippine Islands,* since the Congress has not seen fit to extend either of those Acts to those Islands, and has, therefore, not extended the charter powers of this plaintiff to those Islands),—it follows that, when it undertakes to go there, beyond the territorial limits assigned it by the Congress by its charter powers, it necessarily goes there, as MR. JUSTICE SWAYNE said in the *Harris case, supra,*

> "upon such conditions as may be prescribed by the law of the place";

that is to say, subject to all of the laws of the local sovereignty, the government of the Philippine Islands, including that government's local taxing laws under which the taxes here in question were levied and collected by the local government officials, in like manner as upon any other bank or financial institution doing business in those Islands.

II

In answer to the question from the bench, near the beginning of the argument on Wednesday, December 11th, as to whether or not the provision of Section 1 of the "Foraker Act", the former Organic Act for the Philippines (Act of July 1, 1902, c. 1369, Sec. 1, 32 Stat. 691) quoted in our "Brief for Petitioner" (pp. 20, 47) that:

> "The provisions of Section 1891 of the Revised Statutes of 1878 shall not apply to the Philippine Islands",

was repealed by the present Organic Act for the Islands, the "Jones Law" of August 29, 1916, or has ever been repealed, or whether it is still in effect, THE ANSWER is that

that provision of the "Foraker Act" was not repealed by the "Jones Law", nor ever by any other Act, and that it is still in effect.

Section 31 of the "Jones Law", Act of August 29, 1916, c. 416, 39 Stat. 545, quoted in Appendix I (p. 49) of our "Brief for Petitioner" expressly provides:

> "Sec. 31. That all laws or parts of laws applicable to the Philippines not in conflict with any of the provisions of this Act are hereby continued in force and effect."

Manifestly, the provision of Section 1 of the "Foraker Act" directing that Section 1891 of the Revised Statutes should not apply to the Philippine Islands, was "not in conflict with any of the provisions" of the "Jones Law". Quite to the contrary, it was entirely consonant with the policy of the Congress expressed in Section 5 of the "Jones Law" (quoted in our "Brief for Petitioner" pp. 29, 48) that the statutory laws of the United States thereafter enacted should not apply to the Philippine Islands, "except when they specifically so provide, or it is so provided in this Act." There is no other Act repealing, or in any way affecting, that provision of Section 1 of the "Foraker Act". It is still in full force and effect.

III

In reply to the question near the close of the argument on Thursday, December 12th, as to the manner in which the words "insular possessions" first appeared in Section 25 of the Federal Reserve Act (when they were brought into it by the amendatory Act of September 7, 1916), THE ANSWER is that they were brought in at that time as one of the changes appearing in a *complete revision* of Section 25 of the original Act, as appears from a copy of the pertinent portions of the amendatory Act of September 7, 1916 (c. 461, 39 Stat. 752, 755-756), in the Appendix to this Memo-

randum (*infra*, pp. 16). As there appears, the title of the amendatory Act is

> "An Act to amend certain sections of the Act entitled 'Federal Reserve Act', approved December twenty-third, nineteen hundred and thirteen".

The first section of the amendatory Act (39 Stat. at p. 752) amends Section eleven of the original Act by adding a new clause at the end of it. The next section amends (pp. 752-753) Section 13 of the original Act "to read as follows". The third section (pp. 753-754) amends Section 5202 of the Revised Statutes "to read as follows"; and the fourth section (p. 754) amends sub-section "(e)" of Section 14 of the original Act "to read as follows"; and the fifth (p. 754) that Section 16 of the original Act be amended "to read as follows". The sixth section provides (pp. 754-755) that Section 24 of the Act be and is "amended to read as follows".

And the seventh section then provides with relation to Section 25 of the Original Act, as quoted in the Appendix hereto (pp. 755-756; *infra*, Appendix, p. 16).

> *"That section twenty-five be, and is hereby, amended to read as follows"*,

and then follows Section 25 at length, as thus re-enacted (*Appendix, infra*, p. 16).

**It thus appears that Section 25, as thus re-enacted, was a complete substitution by the Congress of the new section for the old.** It was a complete new expression of the will of the Congress on the entire subject. It, therefore, worked a repeal of the former Section 25 of the old Act of 1913, and constituted the entire law on the subject from that date forward, and the complete expression of the Congressional will. It is, therefore, immaterial whether or not the single word "dependencies", standing alone, as used by the Congress in Section 25 of the original Act of December

23, 1913 (c. 6, 38 Stat. 251, 273; "Brief for Petitioner" pp. 28-29, and Appendix I, p. 58) did, or did not, extend to the Philippines in view of the provision of Section 1 of the "Foraker Act" then in force, that Section 1891 of the Revised Statutes should not run to the Philippines. Whether or not that section in its original form as enacted in 1913 ran to the Philippines, in any event, in view of the fact that, as pointed out in our "Brief for Petitioner" (pp. 32-33), administratively, no license was in fact ever issued for any Philippine branch during those years from 1913 to 1916, and that no national bank apparently ever attempted to establish any branch in those Islands during that period, so that there were no possible "vested rights" to be affected in any way, *the complete new revision of the section by the amendatory Act* of September 7, 1916, *must be taken,* as we have said, *as the complete expression of the Congressional will upon the subject,* and as the complete statement of the law from that time forth, and as a repeal of any possible contrary interpretation that might theretofore have been given to the use of the word "dependencies" in the original Act of 1913 in view of the Organic Act for the Philippine Islands as it stood at that time ("Foraker Act", Sec. 1, *supra*).

And, of course, this new enactment of September 7, 1916, must be deemed to have been made by the Congress in the light of, and to be controlled by, the provision which the Congress had itself enacted only nine days previously, as pointed out in our "Brief for Petitoner" (pp. 29-30), expressly directing that any "laws of the United States" which it should thereafter enact should never be taken or interpreted as applying to the Philippine Islands "except when they *specifically* so provide" ("Jones Law", Act of August 29, 1916, 39 Stat. 545, 547; "Brief for Petitioner", Appendix I, p. 48).[1]

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[1]As to the continuing effect of such a ~~statutory~~ statutory rule of interpretation enacted by the legislative authority, until the

That this is the interpretation to be given to such a new Act of the Congress constituting a complete revision of the law on the subject and substituting this wholly new Section 25 for the former Section 25 of the Act, and that it was a repeal of the former Section 25 of the old law, is well established by the decisions of this court.

Thus, with relation to the substitution of a new section by the Act of February 5, 1867, for Section 25 of the original Judiciary Act of 1789, this court said in *Murdock* v. *City of Memphis,* 20 Wall. (87 U. S. 590, 617:

> "A careful comparison of these two sections can leave no doubt that it was the intention of Congress, by the latter statute, to revise the entire matter to which they both had reference, to make such changes in the law as it stood as they thought best, *and to substitute their will in that regard entirely for the old law upon the subject.* We are of opinion that it was their intention to make a new law so far as the present law differed from the former, and that the new law embracing all that was intended to be preserved of the old, omitting what was not so intended, became complete in itself and repealed all other law on the subject embraced within it. The authorities on this subject are clear and uniform.*
>
> "The result of this reasoning is that the twenty-fifth section of the act of 1789 is technically repealed, and that the second section of the act of 1867 has taken its place." (*Italics supplied*)

In *Pana* v. *Bowler,* 107 U. S. 529, 538, in relation to the effect of an amendatory Act substituting a new section

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legislative authority itself elects to change the rule so established by it, compare *Tomlinson* v. *Jessup,* 15 Wall. (82 U. S.) 454, 457 (FIELD, J.).

* Citing, *United States* v. *Tynen,* 11 Wallace, 88; *Henderson Tobacco, Ib.* 652; *Bartlet* v. *King,* 12 Massachusetts, 537; *Cincinnati* v. *Cody,* 10 Pickering, 36; *Sedgwick on Statutes,* 126.

(Sec. 10) for two sections (Secs. 9 and 10) of a former Act, this court said:

> "It thus appears that sect. 10 of the amendatory act covered the entire subject embraced by sects. 9 and 10 of the original act. It related to the same railroad company; it prescribed different methods of procedure in reference to the same subject, and embraced entirely new provisions, thus plainly showing that it was intended as a substitute, *pro tanto,* for the original act. Sect. 10 of the amendatory act therefore operated as a repeal, by implication of sects. 9 and 10 of the original act, and removed the restriction limiting to $30,000 the amount which could be donated by a township to the railroad company. *United States* v. *Tynen,* 11 Wall. 88; *Henderson's Tobacco, id.* 652; *Murdock* v. *City of Memphis,* 20 *id.* 590; *King* v. *Cornell,* 106 U. S. 395."

And in *District of Columbia* v. *Hutton,* 143 U. S. 18, 26-27, the court said:

> "We are not unmindful of the rule that repeals by implication are not favored. But there is another rule of construction equally sound and well settled which we think applies to this case. Stated in the language of this court in *United States* v. *Tynen,* 11 Wall. 88, 92, it is this: 'When there are two acts on the same subject the rule is to give effect to both if possible. But if the two are repugnant in any of their provisions, the latter act, without any repealing clause, operates to the extent of the repugnancy as a repeal of the first; *and even where two acts are not in express terms repugnant, yet if the latter act covers the whole subject of the first, and embraces new provisions, plainly showing that it was intended as a substitute for the first act, it will operate as a repeal of that act.*' See also *Murdock* v. *Memphis,* 20 Wall. 590, 617; *Tracy* v. *Tuffy,* 134 U. S. 206, 223; *Fisk* v. *Henarie,* 142 U. S. 459." (*Italics supplied*)

Under the circumstances it is believed that the reenact-

ment of Section 25 of the Federal Reserve Act by the amendatory Act of September 7, 1916, was intended by the Congress to express its complete will upon that subject including the places to which national banks might go by the establishment of branches under license from the Federal Reserve Board, and that the Congress there used the expression "dependencies or insular possessions" advisedly, with the express intent of excluding the Philippine Islands from the purview of the Act, in view of the express rule of construction established by the Congress only nine days earlier by Section 25 of the Act of August 29, 1916, and then new Organic Act for those Islands, that any Acts of the Congress thereafter enacted should not be understood as including the Philippine Islands in any way, unless the Congress should itself "specifically" so direct;[2] and in view of the fact also that, as pointed out in our original brief ("Brief of Petitioner" pp. 31-32, and also Appendix I, pp. 52-53); Appendix III, pp. 71-79), and in our "Reply Brief" (pp. 8-9) the Congress had theretofore instituted a wholly different national banking system for the Philippine Islands which has really become in the Philippine National Bank "an arm of the Philippine government", a governmental agency in a much more real and substantial sense than are national banks of the United States.

It was evident that the Congressional intent was not to interfere with that Philippine national banking system by injecting into it any branches of national banks of the United States. The Congress manifestly considered it un-

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[2] And in view of the fact that the Congress evidently had this rule of construction which it had thus established, clearly in mind, because by the Income Tax Act of the very next following day, September 8, 1916, which it did desire should run to the Philippines, it actually did "specifically" so direct in the Act (Act of September 8, 1916, c. 463, Title I, Sec. 23, 39 Stat. 756, 776. See footnote 15, pp. 29-30, "Brief for Petitioner").

necessary and undesirable to extend the continental national banking system to those Islands.[3]

Respondent calls attention to the acts of some administrative authorities which it considers important as administrative interpretations of the Federal Reserve Act and the National Bank Act as running to the Philippine Islands. But we may add that there may have been some administrative acts by some departments of the government treating some Acts of Congress as being in effect in the Philippines, which the Congress never extended there. It appears that the National Industrial Recovery Administration originally considered the National Industrial Recovery Act as being in effect in those Islands until it was halted by the opinion of the Attorney General of December 2, 1933, that it did not run there (32 Ops. Atty. Gen. 360-364, Advanced Sheets, December 2, 1933; "Brief for Petitioner" pp. 24-25). As to any such administrative acts, not shown to have been based upon a careful consideration or examination of the question as to whether or not the Congress actually intended the statute to run to the Philippines, what this court said

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[3] Philippine Act No. 2612 enacted February 4, 1916, creating the Philippine National Bank and (Par. 6) merging the government Agricultural Bank into it was, of course, one of the "laws now in force in the Philippines" which the Congress directed by Section 6 of the Organic Act of August 29, 1916, "shall continue in force and effect" ("Brief for Petitioner" Appendix I, p. 48). Such an important act as that establishing the Philippine National Bank could not escape the attention of the Congress, which must have had it in contemplation when it enacted the amendatory act of September 7, 1916, excluding the Philippine Islands from the scope of the amended Section 25 of the Federal Reserve Act.

in *Myers* v. *United States*, ~~112~~ 272 U. S. 52, 170-171, concerning the comparatively little weight to be accorded to an administrative construction under those circumstances where it is not shown that the question was actively examined by the administrative authorities, is always pertinent. (See, also, *Springer* v. *Philippine Islands*, 277 U. S. 189, 205, citing the *Myers* case.)

Respectfully submitted,

WILLIAM CATTRON RIGBY,
*Attorney for Petitioner.*

SERAFIN P. HILADO,
*Solicitor-General of the Philippine Islands,*
*Of Counsel.*

APPENDIX

**Federal Reserve Act—Amendatory Act of September 7, 1916, c. 461, 39 Stat. 752, 755-756.**

"Chap. 461. An Act to amend certain sections of the Act entitled 'Federal Reserve Act', approved December twenty-third, nineteen hundred and thirteen.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Act entitled 'Federal Reserve Act', approved December twenty-third, nineteen hundred and thirteen, be, and is hereby amended as follows:

* * *

"That section twenty-five be, and is hereby, amended to read as follows:

'Sec. 25. Any national banking association possessing a capital and surplus of $1,000,000 or more may file application with the Federal Reserve Board for permission to exercise, upon such conditions and under such regulations as may be prescribed by the said board, either or both of the following powers:

'First. To establish branches in foreign countries or dependencies or insular possessions of the United States for the furtherance of the foreign commerce of the United States, and to act if required to do so as fiscal agents of the United States.

'Second. To invest an amount not exceeding in the aggregate ten per centum of its paid-in capital stock and surplus in the stock of one or more banks or corporations chartered or incorporated under the laws of the United States or of any State thereof, and principally engaged in international or foreign banking, or banking in a dependency or insular possession of the United States either directly or through the agency, ownership, or control of local institutions in foreign countries, or in such dependencies or insular possessions.

'Such application shall specify the name and capital of the banking association filing it, the powers applied for, and the place or places where the banking operations proposed are to be carried on. The Federal Reserve Board shall have power to approve or to

reject such application in whole or in part if for any reason the granting of such application is deemed inexpedient, and shall also have power from time to time to increase or decrease the number of places where such banking operations may be carried on.

'Every national banking association operating foreign branches shall be required to furnish information concerning the condition of such branches to the Comptroller of the Currency upon demand, and every member bank investing in the capital stock of banks or corporations described under subparagraph two of the first paragraph of this section shall be required to furnish information concerning the condition of such banks or corporations to the Federal Reserve Board upon demand, and the Federal Reserve Board may order special examinations of the said branches, banks, or corporations at such time or times as it may deem best.

'Before any national bank shall be permitted to purchase stock in any such corporation the said corporation shall enter into an agreement or undertaking with the Federal Reserve Board to restrict its operations or conduct its business in such manner or under such limitations and restrictions as the said board may prescribe for the place or places wherein such business is to be conducted. If at any time the Federal Reserve Board shall ascertain that the regulations prescribed by it are not being compiled with, said board is hereby authorized and empowered to institute an investigation of the matter and to send for persons and papers, subpoena witnesses, and administer oaths in order to satisfy itself as to the actual nature of the transactions referred to. Should such investigation result in establishing the failure of the corporation in question, or of the national bank or banks which may be stockholders therein, to comply with the regulations laid down by the Federal Reserve Board, such national banks may be required to dispose of stock holdings in the said corporation upon reasonable notice.

'Every such national banking association shall conduct the accounts of each foreign branch independently of the accounts of other foreign branches established by it and of its home office, and shall at the end of each

fiscal period transfer to its general ledger the profit or loss accrued at each branch as a separate item.

'Any director or other officer, agent, or employee of any member bank may, with the approval of the Federal Reserve Board, be a director or other officer, agent, or employee of any such bank or corporation above mentioned in the capital stock of which such member bank shall have invested as hereinbefore provided, without being subject to the provisions of section eight of the Act approved October fifteenth, nineteen hundred and fourteen, entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes.'

"Approved September 7, 1916."

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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1935

## No. 114

JUAN POSADAS, JR., Collector of Internal Revenue of the Commonwealth of the Philippines, *Petitioner,*

vs.

THE NATIONAL CITY BANK OF NEW YORK, *Respondent.*

**For convenience in reading, this letter heretofore submitted for the Petitioner upon questions from the bench during the argument is now printed, without change.**

December 17, 1935

Honorable Charles E. Cropley, Clerk,
United States Supreme Court,
Washington, D. C.

Re: Juan Posadas, Jr., Collector of Internal Revenue of the Government of the Commonwealth of the Philippine Islands
vs.
The National City Bank of New York
No. 114

Dear Mr. Cropley:

With reference to the question by MR. JUSTICE SUTHERLAND at the argument of this case, as to the origin of the words "insular possessions" put into Section 25 of the Federal Reserve Act by the amendatory Act of September 7, 1916 (c. 461, 39 Stat. 752, 755-756), a search of the Con-

gressional Record and of Committee reports and hearings reveals the following information which it is requested be submitted to the Court:

1. The phrase first used, in the Federal Reserve Act, was "dependencies of the United States". Section 25 of the original Act of December 23, 1913, c. 6, 38 Stat. 251, 273. Very little is found to throw light on the specific intent of the Congress in using that phrase. The bill was the "Glass Bill", introduced in the House by MR. GLASS on August 29, 1913, and referred to the Committee on Banking and Currency (H. R. 7837, 63rd Congress, 1st Sess.; Cong. Rec., Vol. 50, p. 3925). It was reported with amendments on September 9, 1913 (House Report No. 69; Cong. Rec., Vol. 50, p. 4633); debated on September 10, 1913, and the following days (*ib.*, pp. 4638, *et seq.*); and passed the House on September 18, 1913 (Cong. Rec., Vol. 50, pp. 5129-5130).

The Senate report, No. 133 from the Banking and Currency Committee, was presented November 22, 1913 (Cong. Rec., Vol. 50, pp. 6002-6009; Majority and Minority Reports). The bill was debated at length and considerably changed in the Senate; but the section as to "foreign branches" remained substantially as in the House bill, although it was renumbered Section 25, instead of Section 28.

The only thing said about that section by MR. GLASS in his careful explanation of the bill on the floor of the House was (*ib.*, p. 4651) in

> "Conclusion". "* * * minor details, * * * fully set out in the printed report. * * *. We have made provision for foreign trade by furnishing quicker exchanges and affording infinitely better banking facilicilities in that field of enterprise."

MR. M. F. PHELAN of Massachusetts, of the Committee (See Committee Appointments, June 3, 1913, Cong. Rec., Vol. 50, p. 1871), said (*ib.*, p. 4676):

"The bill, furthermore, seeks to develop our *foreign trade* by its provision contained in *Section 28* and in *sub-section "E" of Section 15.* Today there is not a single United States bank in a foreign country. Our present banking laws do not permit either the establishment of national banks or branches of such banks in *foreign countries.* Section 28 provides for the establishment of branches of national banks possessing the required capital. Supplementary to this provision, subsection E of section 15 permits Federal reserve banks to open and maintain banking accounts and to establish agencies for certain purposes in *foreign countries.*" (*Italics supplied*)

The Committee report (House Report No. 69, *supra*) says (p. 50) under "*Banking Facilities for Foreign Trade*":

"The committee is of the opinion that every good purpose * * * can be attained by the adoption of the plan it has proposed, which consists essentially of provision for the establishment of *foreign branches* by existing national banks when such banks have an adequate capital for the kind of work in which they propose to engage, and are found by the Federal reserve board to be in proper condition for undertaking such an enterprise". (*Italics supplied*)

It says nothing about "dependencies"; although Section 28 of the bill then contained the phrase "the foreign country or countries or the dependencies of the United States where the banking operations proposed are to be carried on". (Library of Congress, bound volume of House bills, 63rd Cong.; "J. 50—21—7684-7689").

In the majority report in the Senate (Report No. 133, *supra*), there is only (p. 28):

"Eighth. Foreign branches were also provided for national banks having a capital and surplus of a million dollars or more, with the approval of the Federal Reserve Board (Sec. 28, p. 77).

"This is a very important amendment and one of far-reaching importance to the foreign commerce of

the United States, the purpose of which is so obvious as to need no explanation".

The minority report says nothing about it, although it includes this same Section 28 (p. 132) in the minority's proposed substitute. In the Hearings before the House Committee (Library of Congress, volume "H. G.; 2481—A-4—1913", 745 pages, marked "Banking and Currency Reform; House Hearings; 1913—1913"), no discussion of this subject has been found. In the Senate Committee hearings (3 Vols. with index; Library of Congress, "J. 66, Books 6530, 6531 and 6532"), the only thing found is that during the testimony of Mr. L. P. Peck, cashier of the First National Bank of Hawaii (Vol. 2, pp. 2875, *et seq.*), at the beginning of his testimony there appears (p. 2875):

> "MR. PECK. I would like the privilege of calling the attention of the Committee, Mr. Chairman (SENATOR REED), that the act provides for the entry into a new system of national banks *located in the continental United States.* That, in itself, *eliminates the insular United States*—the organized *Territory of Hawaii.*" (*Italics supplied*)

Mr. Peck's statement was not challenged in any way. During his testimony, this appears (*ib.*, p. 2881):

> "SENATOR O'GORMAN. 'Do you think it was ever designed that this was to be extended to Hawaii, Porto Rico, or the Philippines?'
>
> "SENATOR NELSON. 'I do not know that they have any national banks there.'
>
> "SENATOR O'GORMAN. '*It should be confined to this continent;* in my judgment *that was the intention of the framers of the bill.*'" (*Italics supplied*)

That is all that has been found as to the intention of the Congress in using this phrase "dependencies of the United States", in Section 25 of the Act of 1913. **If by that word, "dependencies", the Congress intended to designate the "insular possessions"** which the United States owns out-right, and which are a part of the "territory belonging to the United States", absolutely at the disposal of the Congress under

its constitutional power "to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States" (Const. Art. IV, Sec. 3, cl. 2), **then it was a new use by the Congress of the term "dependencies".** The Congress had theretofore, in legislating for those possessions, called them *"insular possessions"* or sometimes *"island possessions"*. (See Acts of Congress collated in the Memorandum of the Chief of the Bureau of Insular Affairs (General McIntyre) for the Secretary of War, May 14, 1917; approved in the opinion of the Attorney General, August 30, 1917; copies herewith).

The word *"dependencies"*,—as contra-distinguished from *"possessions"*,—*might properly designate independent peoples having their own sovereignty, but subject to the supervision or control of a greater power;* as for example, the so-called independent principalities of India, as contra-distinguished from the British Crown colonies, which latter, like our "possessions", have no independent sovereignty of their own.

When the Federal Reserve Act was enacted in 1913, there were two countries possessing independent sovereignty, but standing in a subordinate relation to the United States, subject to its supervision and control in important respects and relying on its protection; viz., Cuba and Panama (CUBA, "Platt Amendment", Act of March 2, 1901, and Treaty of May 22, 1903, and corresponding provisions embodied in the Cuban Constitution; PANAMA, Isthmian Canal Convention of November 18, 1903, and corresponding provisions in the Panaman Constitution). MR. GLASS, Chairman of the House Committee on Banking and Currency, three years later, in explaining his bill (H. R. 13,391) in the 64th Congress to amend the Federal Reserve Act, spoke on May 4, 1916 (Cong. Rec., Vol. 53, p. 7422),

> "of the six branch banks established abroad, in the South American countries *and in Panama and Cuba.*"

which is some indication that the Federal Reserve Act had been thought of as authorizing establishment of "foreign branches" under Section 25 only in "foreign countries" wholly independent of the United States, and in those two semi-dependent countries, Panama and Cuba. No branch banks had been established in any of the "possessions" of the United States.

The CENTURY DICTIONARY definition of "dependency" is:

> "4.—That which is subordinate to and dependent upon something else; especially, a territory subject to the control of a power *of which it does not form an integral part;* a dependent state or colony; as the sun and its *dependencies;* the *dependencies* of Great Britain.
>
> "The rapidly rising importance of the Anglo-Indian and Australian Colonies and *dependencies*".
>
> —Hinton, English Radical Leaders, p. 42.
>
> "The great *dependency* of India, with its two hundred millions of people".
>
> —Contemporary Review, XLIX, 763.

"WORDS AND PHRASES" (1st Series), Vol. 2, p. 1991, interprets MR. JUSTICE WASHINGTON's definition, at the Circuit, in *United States* v. *The Nancy,* 27 Fed. Cas. 69, 71, thus:

> " 'Dependencies', as used in the non-importation law of March 2, 1812 (2 Stat. 651), which revived the act of March, 1809, the provisions of which extended to the possessions as well as the colonies and dependencies of Great Britain, implied some civil and political relation borne by one country to another as its superior, different from that of a mere possession."

*If that be the significance which the Congress intended to give the phrase "dependencies of the United States",* in using it in Section 25 of the Federal Reserve Act of December 23, 1913, with relation to "foreign branches" of national banks, then the purpose, when afterwards revising the Act three years later, by the Act of September 7, 1916,

in changing the phraseology so as to include the "insular possessions", is understandable.

But, of course, "insular possessions" as used on September 7, 1916, *did not include the Philippines,* because of the express provision in the Philippine Organic Act of August 29, 1916, enacted only nine days earlier, expressly excluding the Philippines from the purview of any such general phrase, *unless* the Philippines were "specifically" mentioned in the Act; as they were not, in this revision of the Federal Reserve Act ("Brief for Petitioner", pp. 28-30).

The Congressional Record shows that SENATOR HITCHCOCK, Chairman of the Senate Committee for the Philippines, in charge of the bill for the Philippine Organic Act, was also one of the conferees for the Senate on the bill to amend the Federal Reserve Act (Cong. Rec., Vol. 53, p. 233, Committee Appointments, December 13, 1915; *ib.*, p. 12,058, Appointment of Senate conferees on the bill to amend the Federal Reserve Act).

2. With specific reference to MR. JUSTICE SUTHERLAND'S question of the origin of the insertion of the phrase *"insular possessions"*, in the amendatory Act of September 7, 1916, the bill (H. R. 13,391, 64th Congress, 1st Sess.) for that Act was introduced in the House by MR. GLASS on March 18, 1916, and referred to the Committee on Banking and Currency. It was a bill "to amend" the Federal Reserve Act "by adding a new section". It was reported to the House on March 28, 1916, with Committee amendments (House Report No. 447; Cong. Rec., Vol. 53, p. 5054); passed the House on May 4, 1916 (Cong. Rec., Vol. 53, pp. 7420-7422); and appears in full in the Congressional Record (*ib.*, p. 7421). As passed by the House, it did not change the phraseology of the former Section 25 of the original Federal Reserve Act in any way, but added a new section "25a", to permit national banks, with a capital of a million dollars or more, to

"purchase and hold stock in foreign or domestic corporations, other than national banks, which are authorized by their charters to do a banking business in foreign countries exclusively."

The purpose was explained by the Committee Chairman, MR. GLASS (Cong. Rec., Vol. 53, p. 7422, May 4, 1916), thus:

"It is merely an amplification of the provisions of section 25 of the Federal Reserve Act authorizing national banks with a million dollars or more of capital to establish branches.

"It was found that under the provisions of the Federal Reserve Act only national banks of a very large capital could operate effectively, so that of the *six branch banks established abroad, in the South American countries, and in Panama and Cuba,* four of them had been established by the National City Bank of New York, and two by a banking institution here in Washington." (*Italics supplied*)

The Committee report (No. 447; March 28, 1916; Library of Congress; House Reports; 64th Cong., 1st Sess.) made the same explanation.

In the Senate, it was referred to the Committee on Banking and Currency on May 5, 1916, and was reported by SENATOR OWEN, Chairman, for that Committee, with Committee amendments, May 24, 1916 (Senate Report No. 481; Cong. Rec., Vol. 53, p. 8578). The Senate Committee amendments (printed, Cong. Rec., Vol. 53, pp. 10,998-10,999, July 14, 1916) were in fact an entirely new draft, a substitute for the House bill, and embodied a complete revision of Section 25, substantially as it appears in the Act as finally passed.

THAT COMMITTEE AMENDMENT INTRODUCED, FOR THE FIRST TIME, THE WORDS "INSULAR POSSESSIONS". The Committee report contains no explanation of the insertion of those words; nor did the Chairman, SENATOR OWEN, say anything about them, when explaining the Committee amendments

on the Senate floor. As to this section 25, he said only (Cong. Rec., Vol. 53, p. 11,002, col. 2):

> "Under the head of 'banking corporations authorized to do foreign banking business' we have struck out certain words in Section 25 and inserted these words in lieu thereof:*** (*reading*) *** The purpose of that provision is to permit the various banks of the United States, if they so wish, to cooperate together in establishing or taking stock in a bank which shall act as a medium for them in dealing with foreign financial affairs and through which they can transact their business, if they so please, by establishing a bank in which they will take stock. That is explained also in the letter of the Federal Reserve Board at considerable length."

The substitute bill passed the Senate on July 21, 1916, substantially as reported by its Committee (Cong. Rec. Vol. 53, p. 11,856); conference report agreed to by Senate and House; approved by the President on September 7, 1916, Public No. 270.

3. As to Mr. Justice Van Devanter's question at the argument concerning the Virgin Islands, nothing has been found to indicate that the acquisition of those islands in that year had any bearing, one way or the other, upon the insertion of the words "insular possessions" in the revision of Section 25 of the Federal Reserve Act. Denmark's cession of those Islands was in exactly the same language as Spain's cession of Puerto Rico and the Philippines. By Article II of the Treaty of Peace, December 10, 1898, Spain "cedes to the United States" Puerto Rico, and by Article III "cedes to the United States" the Philippines (30 Stat. 1754, 1755). In precisely the same language Denmark, by Article I of the Treaty of August 4, 1916, "cedes to the United States" the Virgin Islands (39 Stat., Part 2, p. 1706). The Virgin Islands became another "insular posses-

sion" of the United States, in the same category as the others.

No reference to the Virgin Islands has been found anywhere in the debates or in the Committee reports or hearings on the amendment of the Federal Reserve Act.

A copy of this letter is being sent to opposing counsel.

Very respectfully yours,

WILLIAM CATTRON RIGBY,
*Attorney for Petitioner.*

## APPENDIX

**Memorandum of Chief, Bureau of Insular Affairs; and Opinion of Attorney General.**

May 14, 1917

MEMORANDUM for the Secretary of War.

*Meaning of the term "Insular possessions of the United States."*

Under date of April 11th the Secretary of State submits to the Attorney General this question:

> "I desire to be informed whether, in view of the provisions of the Act of Congress of March 2, 1917, 'To provide a civil government for Porto Rico and for other purposes' the Governor of Porto Rico has authority, or can be granted authority, by the President to issue passports."

After quoting Section 4075 of the Revised Statutes as amended by the Act of Congress approved June 14, 1902, and Section 4078 of the Revised Statutes of the United States, the Secretary of State adds:

> In "Rules Governing the Granting and Issuing of Passports in the Insular Possessions of the United States," signed by the President July 19, 1902, the Chief Executive of Porto Rico was authorized to issue passports in that island.
>
> In order to determine whether the Governor of Porto Rico now has authority, or may be granted authority, to issue passports, it seems necessary to decide whether Porto Rico now has the status of one of the "insular possessions of the United States", or whether it is an organized territory and a part of the United States proper. In the latter case, it does not appear that the Governor of Porto Rico has authority, or can be granted authority, to issue passports.

The first paragraph above quoted is technically in error. The Chief Executive of Porto Rico was not authorized by title to issue passports, but it was stated:

"Application for a passport by a person in one of the insular possessions of the United States should be made to the *chief executive of such possession*",

and this was evidently construed in the appropriate bureau of the Department of State as including the Governor of Porto Rico.

It is the second paragraph above, however, to which it is desired to call particular attention, for it involves what is believed to be the fallacy that there is some conflict between a "territory of the United States" and an "insular possession of the United States".

Many of the laws passed by Congress make it perfectly clear that by the term "insular possession of the United States" it is not designed to designate a particular form of government, and the Territory of Hawaii has been frequently so designated in legislation, as is shown by the following citations:

Section 5 of the Act of April 29, 1908, 35 Stat. L, Pt. 1, p. 70.

"That such of the navigation laws of the United States as are in force in the Philippine Islands in regard to vessels arriving in the Philippine Islands from the mainland territory and other *insular possessions* of the United States shall continue to be administered by the proper officials of the government of the Philippine Islands."

It is manifest that the term "other insular possessions of the United States" in the above included the Territory of Hawaii, and the law has been so construed.

Act making appropriations for the Post Office Dept. May 27, 1908, 35 Stat. L., pt. 1, p. 406.

. . . "and for service in Alaska, Porto Rico, Philippine Islands, Hawaii, or other *island possessions* . . ."

Act to regulate the immigration of aliens to, and the residence of aliens in, the United States.

"Sec. 12. That upon the arrival of any alien by water at any port within the United States on the North American Continent from a foreign port or a port of the Philippine Islands, Guam, Cuba, Porto Rico, or Hawaii, or at any port of the said *insular possessions* from any foreign port, or from a port of another *insular possession* of the United States . . ."

The term "said insular possessions" makes perfectly clear the inclusion in that term of Porto Rico and Hawaii.

In a number of Acts it has been provided that the term "Territory" shall include the insular possessions of the United States.

In the Tariff Act of 1909 it was provided:

"there shall be levied, collected, and paid upon all articles when imported from any foreign country into the United States or into *any of its possessions* (except the Philippine Islands and the islands of Guam and Tutuila) the rates . . ."

The expression "any of its possessions" obviously included Porto Rico, and the law is so construed.

Act to regulate the immigration of aliens into the United States, approved Feb. 20, 1907, 34 Stat. L. pt. 1, p. 898, it is provided in Section 1, "Provided further, That whenever the President shall be satisfied that passports issued by any foreign government to its citizens to go to any country other than the United States or to any *insular possession* of the United States or to the Canal Zone are being used for the purpose of enabling the holders to come to the continental territory of the United States to the detriment of labor conditions therein, the President may refuse to permit such citizens of the country issuing such passports to enter the continental territory of the United States from such other country or from such *insular possessions* or from the Canal Zone."

This provision was intended to apply particularly to the Territory of Hawaii.

A reading of the laws with reference to the noncontiguous territory of the United States makes it perfectly clear that the expressions "insular possessions of the United States" and "island possessions of the United States", which are used interchangeably are not intended to describe a particular form of government, but are used in the geographic sense, and are quite as applicable to a Territory of the United States if located on an island as to any other government so situated.

The particular question—whether the Governor of Porto Rico shall issue passports, or not—is not of importance to this Department. It is thought that the law with reference to the granting of passports in the insular possessions leaves the matter entirely in the discretion of the President to authorize, or not, the granting of such passports by the Chief Executive or other officers of such possessions, and that whether the Governor of Porto Rico is hereafter to issue passports is a matter, under the law, entirely within the discretion of the President.

It is, however, the view of this Department that the territorial status of Porto Rico was not changed by the recent organic act and that a decision indicating that there had been such a change might have far-reaching effects.

It is, therefore, recommended that the Honorable the Secretary of State and the Honorable the Attorney General be requested to reconsider the question submitted, with the foregoing in view. Apparently, the question submitted does not require a legal decision in view of the fact that it is entirely within the discretion of the President to permit, or not, the Governor of Porto Rico to issue passports.

(Signed) FRANK MCINTYRE,
*Chief of Bureau.*

DEPARTMENT OF JUSTICE
WASHINGTON

The Honorable August 30, 1917

The Secretary of State.

Sir:

I have the honor to acknowledge the receipt of the communication of the Acting Secretary of State dated July 25, 1917, requesting reconsideration of the opinion of May 8, 1917, upon the question whether in view of the Act of March 2, 1917, "To provide a Civil Government for Porto Rico and for other purposes", the Governor of Porto Rico has authority, or may be granted authority, to issue passports.

The issuance of passports is controlled by Section 4075 of the Revised Statutes as amended June 14, 1902, providing as follows:

> "Sec. 4075. The Secretary of State may grant and issue passports, and cause passports to be granted, issued, and verified in foreign countries by such diplomatic or consular officers of the United States, and by such chief or other executive officer of the *insular possessions of the United States*, and under such rules as the President shall designate and prescribe for and on behalf of the United States; and no other person shall grant, issue, or verify any such passport . . . "

In your letter of April 11, 1917, submitting the question above referred to, it was stated that by the "Rules Governing the Granting and Issuing of Passports in the Insular Possessions of the United States", signed by the President July 19, 1902, the chief executive of Porto Rico was authorized to issue passports in that island; and it was suggested that in answering the question submitted it seemed "necessary to determine whether Porto Rico now has the status of one of the 'insular possessions of the United States' or whether it is an organized territory and a part of the United States proper."

In the opinion of May 8, 1917, it was stated that inasmuch

as Porto Rico has the status of an organized Territory it is no longer an "insular possession of the United States", and that accordingly the Governor of Porto Rico has not, and can not be granted, authority to issue passports.

The Acting Secretary of State now transmits with his letter of July 25, 1917, a copy of a letter of the Secretary of War and of a memorandum by the Chief of the Bureau of Insular Affairs supporting the view that the present political status of Porto Rico as an organized Territory is not inconsistent with that of an "insular possession of the United States."

I am convinced that this view is correct and that the opinion of May 8, 1917, is erroneous. The words "insular possessions of the United States" in their natural meaning more aptly refer to geographical location than to a particular form of government. Unless, therefore, those words as used in this statute have some other meaning, a Territory of the United States may at the same time be an insular possession of the United States. There is nothing to indicate that Congress intended to use them here in any other than their natural meaning. On the contrary, the instances cited by the Chief of the Bureau of Insular Affairs show that the practice of Congress has been to use the words in a geographical sense and consequently as including Territories, when separated by water from the continental United States, such as Porto Rico and Hawaii.

It follows that the Governor of Porto Rico may still be authorized to issue passports under Section 4075 of the Revised Statutes, as amended. In this aspect of the question, it is unnecessary for me to express any view as to the present status of Porto Rico as an organized or unorganized territory, and I accordingly withdraw what was said in my opinion of May 8, 1917, on that point.

Respectfully,

(Signed) T. W. Gregory,
*Attorney General.*

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# Supreme Court of the United States

OCTOBER TERM, 1935.

No. 114.

JUAN POSADAS, JR., Collector of Internal Revenue of the Philippine Islands,

*Petitioner,*

—against—

THE NATIONAL CITY BANK OF NEW YORK,

*Respondent.*

## MEMORANDUM FOR RESPONDENT, THE NATIONAL CITY BANK OF NEW YORK, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

HARRY W. FORBES,
*Attorney for Respondent.*

CARL A. MEAD,
*Of Counsel.*

THE COURT PRESS, N. Y. C.

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# Supreme Court of the United States

OCTOBER TERM, 1935.

No. 114.

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JUAN POSADAS, JR., Collector of Internal Revenue of the Philippine Islands,

*Petitioner,*

—against—

THE NATIONAL CITY BANK OF NEW YORK,

*Respondent.*

---

## *MEMORANDUM FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.*

### *Opinions Below.*

The opinion of the Insular Court of First Instance of Manila has not been reported (see Record, pp. 132-137).

The opinions of the Supreme Court of the Philippine Islands have not been reported (see Record, pp. 142-161).

### *Question Presented.*

The question is whether the Government of the Philippine Islands, a dependency of the United States, having levied and collected a tax on the net income of a branch of The National City Bank of New York, conducting business in the Philippine

Islands, may, in addition, levy and collect taxes upon the deposits and the capital of the branch.

This Court has very recently decided that *Puerto Rico* has no power to impose similar capital taxes, in addition to income taxes, on a local branch of this same bank.

*Domenech* v. *National City Bank*, 294 U. S. 199.

## Statutes.

Section 5219 of the Revised Statutes, as amended by the Acts of March 4, 1923, Chapter 267, 42 Stat. 1499, and March 25, 1926, Ch. 88, 44 Stat. 223 (12 U.S.C.A. Sec. 548). See appendix, Exhibit A.

Sections 1 and 5 of the Act of August 29, 1916, Ch. 416, 39 Stat. 545, entitled "An Act to declare the purposes of the people of the United States as to the future political status of the people of the Philippine Islands and to provide a more autonomous government for those Islands" (48 U.S.C.A. Secs. 1001, 1003). See appendix, Exhibit B.

Section 25 of the Federal Reserve Act, as amended, 12 U.S.C.A. Sec. 601. See appendix, Exhibit C.

Sections 1499 and 1502 of the Philippine Administrative Code, together with the enacting clause of the Code (Philippine Act, No. 2711, approved March 10, 1917). See appendix, Exhibit D.

## Statement.

The National City Bank of New York (hereinafter referred to as the "Bank") is a national banking association with its principal office and place of business in New York City. It operates branches in Manila and Cebu in the Philippine Islands, under

authority conferred by Section 25 of the Federal Reserve Act.

The Government of the Philippine Islands imposed, and the Bank paid, a tax on the net income of the business of the Bank in the Philippine Islands for the first half of the year 1931 (Record, pp. 109-110). There is no controversy with respect to the income tax.

The Government of the Philippine Islands, however, in addition to the income tax, imposed, and the Bank paid, under protest, a tax for the first half of the year 1931 amounting to 77,324 pesos and 11 centavos (Ps77,324.11) as deposit and capital taxes for the first half of the year 1931.

The Bank brought this action in the Court of First Instance of Manila, Philippine Islands, against Juan Posadas, Jr., Collector of Internal Revenue of the Philippine Islands, to recover the said Ps77,324.11 paid under protest.

The Court of First instance in Manila allowed a recovery of the tax on the deposits but not of the tax on the capital (Opinion, Record, pp. 132-137).

The Supreme Court of the Philippine Islands, one Judge dissenting, ordered a refund of the taxes both on the deposits and on the capital (Opinions, Record, pp. 142-161).

# POINTS.

## FIRST.

**The Philippine Islands are a dependency of the United States.**

The Autonomy Act applies to the Philippine Islands as ceded to the United States Government by the Treaty of Peace concluded between the United States and Spain on April 11, 1899 (48 U.S.C.A., Sec. 1001).

In an opinion rendered to the Secretary of War by Hon. Harlan F. Stone under date of April 30, 1924, the following appears (34 Opinions of Attorneys General, 291):

> "The Philippine Islands came under the sovereignty of the United States by a treaty with Spain, and, while they have not been incorporated into the United States as a part thereof, they are subject to its control as a dependency or possession, and they, therefore, constitute territory of the United States and having been so acquired they remain subject to such control until such time as Congress may determine in its discretion that the dependency has reached a condition where the islands should be admitted as a part of the United States or that this Government should terminate its occupation and surrender the jurisdiction of the United States."

In an opinion rendered to the Secretary of War by Hon. John G. Sargent under date of April 17, 1925 (34 Opinions of Attorneys General 465-6), the following statement was made:

> "The Philippine Islands, while not an organized territory of the United States, are,

nevertheless, an insular possession appurtenant to the United States. They constitute a territorial possession and may be dealt with as the Congress of the United States may deem fit and proper. (*Mormon Church* v. *United States, supra; DeLimo* v. *Bidwell,* 182 U. S. 1; *Downes* v. *Bidwell,* 182 U. S. 244, 342.)"

## SECOND.

**The National Bank Act and the Federal Reserve Act extend to the Philippine Islands.**

Section 25 of the Federal Reserve Act, as originally enacted *in 1913* (38 Stat. 251, 273) gave to national banking associations possessing capital and surplus of one million dollars or more the privilege of applying to the Federal Reserve Board for permission to establish branches "in foreign countries *or dependencies of the United States* for the furtherance of the foreign commerce of the United States and to act, if required to do so, as fiscal agents of the United States". Leave to establish the Philippine branches was given to the Bank by the Federal Reserve Board on January 23, 1930 (Record, pp. 42-3).

Section 5 of the Jones or Autonomy Act, relating to the Philippine Islands (48 U.S.C.A., Sec. 1003) provides:

> "The statutory laws of the United States *enacted subsequent to August 29, 1916,* shall not apply to the Philippine Islands except when they specifically so provide or it is so provided in this chapter."

It follows that the Federal Reserve Act authorized the Bank to open branches in the Philippine Islands for two reasons: (1) because it was enacted two years before the Autonomy Act; and (2) because it

"specifically so provides", that is, it authorized the opening of branches in the "dependencies" of the United States; and the Philippine Islands were then dependencies of the United States.

This precise question has very recently been passed upon by this Court in regard to Puerto Rico.

> *Domenech* v. *National City Bank,* 294 U. S. 199, 204.

In that case the question was presented as to the power of Puerto Rico to tax the Puerto Rican branch of this Bank. Mr. Justice Roberts said, in the course of his opinion (294 U. S., 204):

> "The system of national banks was intended to be co-extensive with the territorial limits of the United States, * * * The organization of a national bank in Puerto Rico is within the contemplation of the National Banking Act; but if there were doubt concerning the proposition, it finds support in legislation extending applicable laws of the United States to the Island."

In the same way 48 U.S.C.A., Sec. 1003, lends support to the extension of the National Bank Act to the Philippine Islands so far as the branches of the Bank are concerned.

As the Bank was expressly authorized to establish branches in dependencies of the United States, and as the Philippine Islands are a dependency of the United States, it follows that the laws defining the powers, duties, liabilities and privileges of national banks are extended to the Philippine Islands so far as such branches are concerned. It could not have been contemplated that these branches should operate in the Philippine Islands otherwise than in accord-

ance with the laws of the United States, under which the Bank was organized.

> "Every corporation necessarily carries its charter wherever it goes for that is the law of its existence."
>
> *Relfe* v. *Rundle,* 103 U. S., 222, 226;
> *Canada So. R. R. Co.* v. *Gebhard,* 109 U. S., 527, 537.

## THIRD.

**The Government of the Philippine Islands had no power to tax the deposits and capital of the Philippine branches of the Bank.**

R.S., Sec. 5219 (12 U.S.C.A., Sec. 548), as amended by the Act of March 25, 1926, Ch. 88, 44 Stat. 223, authorizes the States to impose the following taxes on national banks: (1) on the shares; (2) to include the dividends derived therefrom in the taxable income of the shareholder; (3) on the net income; or (4) upon certain conditions, according to or measured by the net income; and provides that "the imposition by any State of any one of the above four forms of taxation shall be in lieu of the others", with certain exceptions which are not involved here. Concededly, *no State* could tax a national bank on its income and, *in addition,* impose deposit taxes and capital taxes, as the Philippine Government has attempted to do.

Ever since the case of *McCulloch* v. *State of Maryland* (4 Wheat. 316, 426, 430, 436), it has been the law that the States may not tax banks incorporated under the Federal laws, except with the consent of Congress, since they are agencies of the Federal Government.

*Owensboro Nat. Bank* v. *Owensboro,* 173 U. S., 664, 668;
*Des Moines Nat. Bank* v. *Fairweather,* 263 U. S., 103, 106;
*First Nat. Bank* v. *Anderson,* 269 U. S., 341, 347;
*Iowa Des Moines Nat. Bank* v. *Bennett,* 284 U. S., 239, 244.

The petitioner's contention (Brief, p. 30) that R.S., Sec. 5219, does not extend to the Philippine Islands, defeats his entire argument.

The States *have no power* to tax national banks, unless that power is expressly conferred by Congress.

> "the respective States would be wholly without power to levy any tax, either direct or indirect, upon the national banks, their property, assets or franchises, were it not for the permissive legislation of Congress."
>
> *Owensboro Nat. Bank* v. *Owensboro,* 173 U. S., 664, 668.

Such power is conferred on the States *only by R.S., Sec. 5219,* and that power is "co-extensive with the territorial limits of the United States".

*Talbott* v. *Silver Bow County,* 139 U. S., 438, 443;
*Domenech* v. *National City Bank,* 294 U. S., 199, 204.

The dependencies of the United States, in the absence of the clear and explicit consent of Congress, *have no power* to tax a national bank, which is "a Federal instrumentality" because "the dependency may not tax the sovereign".

*Domenech* v. *National City Bank,* 294 U. S., 199, 205.

Consequently, if as the petitioner contends, R.S., Sec. 5219, does not extend to the Philippine Islands, no consent has ever been given by Congress to the Philippine Government to tax national banks, since the grant "of a general power to tax should not be construed as a consent".

*Domenech* v. *National City Bank,* 294 U. S., 199, 205.

It follows that, if Section 5219 does not extend to the Philippines, the real property tax and the income tax, which are not questioned by the respondent, are also void.

For the purposes of this case, it is therefore entirely immaterial whether or not R.S., Sec. 5219, extends to the Philippines. As the Philippine Government has assessed and collected a tax on the income of the Bank, it has exhausted its taxing power, if any such power is conferred upon it by Congress under R.S., Sec. 5219. In any event, it has no power or authority to levy the deposit and capital taxes which are in question in this action.

The issue does not depend, as contended by the Petitioner, upon the question whether there is a Federal Statute *limiting* the general taxing power of the Philippine Government, but, as held in the *Domenech* case, upon whether the power to tax the Bank has been *granted* to the dependency clearly and explicitly by Act of Congress.

As the Philippine Government has assessed and collected a tax on the income of the Bank under Subdivision 3 of Revised Statutes, Section 5219, as amended, it has exhausted its taxing power if such a power is conferred upon it by Congress (except for the power to tax the real property of the Bank) and, therefore, it has no power or authority to levy,

in addition, the deposit and capital taxes which are in question in this action.

That the exemption from taxation applies to branches as well as to the main offices of national banks has been decided by this Court.

*McCulloch* v. *State of Maryland*, 4 Wheat., 316, 424-5;
*Domenech* v. *National City Bank*, 294 U. S., 199, 204.

In the *Domenech* case, this Court held:

> "Taxation of a bank's branch is taxation of the bank itself."

As every phase of the questions presented in this suit has very recently been passed upon by this Court, the petition should be denied.

The writ of certiorari was granted in the *Domenech* case only because an important question of Federal law was presented "which has not been but should be settled by this court" (294 U. S., 201).

In view of the *Domenech* decision, that reason for granting the writ does not exist in the present case.

## FOURTH.

***The petition for a writ of certiorari should be denied.***

Dated, Washington, July 23, 1935.

HARRY W. FORBES,
*Attorney for Respondent,*
55 Wall Street,
New York City.

CARL A. MEAD,
*Of Counsel.*

# APPENDIX.

## Exhibit A.

Section 5219 of the Revised Statutes, as amended by the Act of March 4, 1923, Ch. 267, 42 Stat. 1499, and March 25, 1926, Ch. 88, 44 Stat. 223 (12 U.S.C.A., Sec. 548):

"*Section 548. State taxation.* The legislature of each State may determine and direct, subject to the provisions of this section, the manner and place of taxing all the shares of national banking associations located within its limits. The several States may (1) tax said shares, or (2) include dividends derived therefrom in the taxable income of an owner or holder thereof, or (3) tax such associations on their net income, or (4) according to or measured by their net income, provided the following conditions are complied with:

1. (a) The imposition by any State of any one of the above four forms of taxation shall be in lieu of the others, except as hereinafter provided in subdivision (c) of this clause.

(b) In the case of a tax on said shares the tax imposed shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State coming into competition with the business of national banks; *Provided,* that bonds, notes, or other evidences of indebtedness in the hands of individual citizens not employed or engaged in the banking or investment business and representing merely personal investments not made in competition with such business, shall not be deemed moneyed capital within the meaning of this section.

(c) In case of a tax on or according to or measured by the net income of an association, the taxing State may, except in case of a tax on net income, include the entire net income received from all sources, but the rate shall not be higher than the rate assessed upon other financial corporations nor higher than the highest of the rates assessed by the taxing State upon mercantile, manufacturing, and business corporations doing business within its limits: *Provided, however,* That a State which imposes a tax on or according to or measured by the net income of, or a franchise or excise tax on, financial, mercantile, manufacturing, and business corporations organized under its own laws or laws of other States and also imposes a tax upon the income of individuals, may include in such individual income dividends from national banking associations located within the State on condition that it also includes dividends from domestic corporations and may likewise include dividends from national banking associations located without the State on condition that it also includes dividends from foreign corporations, but at no higher rate than is imposed on dividends from such other corporations.

(d) In case the dividends derived from the said shares are taxed, the tax shall not be at a greater rate than is assessed upon the net income from other moneyed capital.

2. The shares of any national banking association owned by nonresidents of any State, shall be taxed by the taxing district or by the State where the association is located and not elsewhere; and such association shall make return of such shares and pay the tax thereon as agent of such nonresident shareholders.

3. Nothing herein shall be construed to exempt the real property of associations from taxation in any State or in any subdivision thereof, to the same extent, according to its value, as other real property is taxed.

4. The provisions of section 5219 of the Revised Statutes of the United States as in force prior to March 25, 1926, shall not prevent the legalizing, ratifying, or confirming by the States of any tax heretofore paid, levied, or assessed upon the shares of national banks, or the collecting thereof, to the extent that such tax would be valid under said section. (As amended Mar. 25, 1926, c. 88, 44 Stat. 223.)"

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**Exhibit B.**

Sections 1 and 5 of the Act of August 29, 1916, Ch. 416, 39 Stat. 545, entitled "An Act to declare the purposes of the people of the United States as to the future political status of the people of the Philippine Islands and to provide a more autonomous government for those Islands" (48 U.S.C.A., Secs. 1001, 1003):

"*Section 1001. The Philippines; meaning of term.* The provisions of this chapter and the name 'the Philippines' as used herein shall apply to and include the Philippine Islands ceded to the United States Government by the treaty of peace concluded between the United States and Spain on the 11th day of April, 1899, the boundaries of which are set forth in Article III of said treaty, together with those islands embraced in the treaty between Spain and the United States concluded at Washington on the 7th day of November, 1900 (Aug. 29, 1916, c. 416, Sec. 1, 39 Stat. 545)."

"*Section 1003. Application of statutory law of United States.* The statutory laws of the United States enacted subsequent to August 29, 1916, shall not apply to the Philippine Islands, except when they specifically so provide, or it is so provided in this chapter. (Aug. 29, 1916, c. 416, Sec. 5, 39 Stat. 547.)"

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## Exhibit C.

Section 25 of the Federal Reserve Act, as amended, 12 U.S.C.A. Sec. 601:

"*Section 601. Authorization; conditions and regulations.* Any national banking association possessing a capital and surplus of $1,000,000 or more may file application with the Federal Reserve Board for permission to exercise, upon such conditions and under such regulations as may be prescribed by the said board, either or both of the following powers:

First. To establish branches in foreign countries or dependencies or insular possessions of the United States for the furtherance of the foreign commerce of the United States, and to act if required to do so as fiscal agents of the United States.

Second. To invest an amount not exceeding in the aggregate 10 per centum of its paid-in capital stock and surplus in the stock of one or more banks or corporations chartered or incorporated under the laws of the United States or of any State thereof, and principally engaged in international or foreign banking, or banking in a dependency or insular possession of the United States either directly or through the agency, ownership, or control of local institutions in foreign countries, or in such dependencies or insular possessions.

Until January 1, 1921, any national banking association, without regard to the amount of its capital and surplus, may file application with the Federal Reserve Board for permission, upon such conditions and under such regulations as may be prescribed by said board, to invest an amount not exceeding in the aggregate 5 per centum of its paid-in capital and surplus in the stock of one or more corporations chartered or incorporated under the laws of the United States or of any State thereof and regardless of its location, principally engaged in such phases of international or foreign financial operations as may be necessary to facilitate the export of goods, wares, or merchandise from the United States or any of its dependencies or insular possessions to any foreign country; *Provided, however,* That in no event shall the total investments authorized by this section by any one national bank exceed 10 per centum of its capital and surplus.

Such application shall specify the name and capital of the banking association filing it, the powers applied for, and the place or places where the banking or financial operations proposed are to be carried on. The Federal Reserve Board shall have power to approve or to reject such application in whole or in part if for any reason the granting of such application is deemed inexpedient, and shall also have power from time to time to increase or decrease the number of places where such banking operations may be carried on. (Dec. 23, 1913, c. 6, Sec. 25, 38 Stat. 273; Sept. 7, 1916, c. 461, 39 Stat. 755; Sept. 17, 1919, c. 60, Sec. 2, 41 Stat. 286.)"

## Exhibit D.

Sections 1499 and 1502 of the Philippine Administrative Code, together with the enacting clause of the Code (Philippine Act, No. 2711, approved March 10, 1917):

"For the purpose of adapting it to the Jones Law and the Reorganization Act, numbered two thousand six hundred and fifty-seven, known as The Administrative Code, is hereby amended in certain particulars; and said Act shall hereafter read as follows:

*Section 1. Title of Act.*—This Act shall be known as the Administrative Code.

*Section 1499. Tax on capital, deposits, and circulations of banks.*—Subject to the exemption herein made there shall be collected from banks the following taxes on capital, deposits, and circulations:

(a) Upon the capital employed by the bank, for each month, one twenty-fourth of one per centum.

(b) Upon the average amount of deposits of money, subject to payment by check or draft, or represented by certificates of deposits, or otherwise, whether payable on demand, or on some future day, for each month, one-eighteenth of one per centum.

(c) Upon the average amount of circulation issued by the bank, including as circulation all notes and other obligations calculated or intended to circulate or be used as money, but not including such as may be retained in the vault of the bank or redeemed and on deposit for said bank, for each month, one-twelfth of one per centum.

(d) 'Bank' as herein used, includes every incorporated or other bank, and every person, association, or company having a place of business where credits are opened by the deposit or collection of money or currency subject to be paid or remitted upon draft, check, or order, or where money is advanced or loaned on stocks, bonds, bullion, bills or exchange, or promissory notes are received for discount or for sale.

'Capital employed' does not include money borrowed or received from time to time in the usual course of business from any person not a partner of or interested in such bank; and no tax shall be imposed on the capital employed by any person whose sole business is lending money on real-estate security.

"*Section 1502. Computing resources of bank incorporated abroad.*—The amount of capital used by a bank within the Philippine Islands, when such bank is a branch of a bank incorporated under laws of the United States or a foreign country, shall, for the purposes of assessment hereunder, be determined in the following manner: The total amount of the capital of the bank shall be ascertained, and, likewise, the total amount of the net earnings of the bank accruing during the preceding six months, and also the total amount of the net earnings accruing from the bank's business conducted in the Philippine Islands; and such a proportion of the total capital of the bank shall be deemed to have been employed in the Philippine Islands as the net earnings in the Philippine Islands bear to the total net earnings of the bank."

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CHARLES ELMORE

# Supreme Court of the United States

OCTOBER TERM, 1935.

No. 114.

JUAN POSADAS, JR., Collector of Internal Revenue of the Philippine Islands,

*Petitioner,*

—against—

THE NATIONAL CITY BANK OF NEW YORK,

*Respondent.*

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

## BRIEF FOR RESPONDENT.

HARRY W. FORBES,
*Attorney for Respondent.*

CARL A. MEAD,
FRANK A. F. SEVERANCE,
*Of Counsel.*

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# Supreme Court of the United States

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JUAN POSADAS, JR., Collector of Internal Revenue of the Philippine Islands,

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THE NATIONAL CITY BANK OF NEW YORK,

*Respondent.*

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## *BRIEF FOR RESPONDENT.*

### *Opinions Below.*

The opinion of the Court of First Instance (Record, pp. 132-37) and the opinions of the Philippine Supreme Court (Record, pp. 142-61) have not been officially reported.

### *Statement.*

The National City Bank of New York (hereinafter referred to as the "Bank") is a national banking association with its principal office and place of business in New York City. It operates branches in Manila and Cebu in the Philippine Islands, under authority conferred by the Federal Reserve Board, pursuant to Section 25 of the Federal Reserve Act.

The Government of the Philippine Islands imposed, and the Bank paid, a tax on the net income

of the business of the Bank in the Philippine Islands for the first half of the year 1931 (Record, pp. 109, 110). There is no controversy with respect to the income tax.

The Government of the Philippine Islands, however, in addition to the income tax, imposed, and the Bank paid, under protest, a tax for the first half of the year 1931 amounting to 77,324 pesos and 11 centavos (Ps. 77,324.11) as deposit and capital taxes for the first half of the year 1931.

The Bank brought this action in the Court of First Instance of Manila, Philippine Islands, against Juan Posadas, Jr., Collector of Internal Revenue of the Philippine Islands, to recover the said Ps. 77,324.11 paid under protest.

The Court of First Instance of Manila allowed a recovery of the tax on the deposits but not of the tax on the capital (Opinion, Record, pp. 132-137).

The Supreme Court of the Philippine Islands, in a careful opinion, printed as an Appendix to this brief (*post,* pp. 34-47), one Judge dissenting, ordered a refund of the taxes both on the deposits and on the capital.

The Collector's petition for a writ of certiorari to this Court was allowed on October 14, 1935.

### *Question Presented.*

The question presented in this case is whether a national bank, *in addition* to being subject to the payment of taxes on its real estate in the Philippine Islands and a tax on its net income from the business conducted by its branches in the Philippine Islands, may also be subjected to taxes upon its *capital* employed in the Philippine Islands and upon *deposits* in its Philippine branches. Concededly no

such taxes could be imposed on a national bank in any state or territory. The question presented is not, as stated by the petitioner, whether the Philippine Government may impose *any* tax upon the Philippine branches of a national bank; and the question whether the National Bank Act or the Federal Reserve Act extend to the Philippine Islands is immaterial.

Furthermore, the question whether there is any *implied prohibition* against the taxation of branches of a national bank by the Philippine Government is not involved. *The only question is whether Congress has granted to the Philippine Government power to impose taxes on capital and deposits.*

This precise question has recently been decided by this Court in *Domenech* v. *National City Bank* (294 U. S. 199), where it was held that Puerto Rico could not impose taxes on this respondent, in addition to real estate and income taxes, in the absence of an express grant of such power by Congress. Petitioner does not claim that Congress has expressly granted any such power to the Philippine Government.

### *Facts.*

On April 30, 1932, the respondent filed with the Bureau of Internal Revenue of the Philippine Islands a Return of its net income from its Philippine branches for the year 1931, showing a total of Ps. 518,871.61, upon which on June 3, 1932, it paid an income tax of Ps. 15,566.15, in accordance with the Internal Revenue Laws of the Philippine Islands. This tax was paid without protest and is not in controversy.

In addition to this tax, however, the Philippine Government attempted (Record, Ex. F, p. 83) to levy a tax on the portion of the average capital of

the respondent employed in the Philippine Islands of Ps. 16,104.68, and a tax on the average monthly deposits of the respondent's Philippine branches of Ps. 61,219.43, aggregating Ps. 77,324.11. The amount of capital employed in the Philippines was determined arbitrarily (Record, pp. 22-3), since the respondent's branches have no capital of their own. These taxes were paid under protest (Ex. J, Record, p. 112), the respondent contending that, since it is a national banking association subject to taxation only as permitted by R. S., Section 5219, the Philippine Government, having imposed a tax on net income, is without power to impose any capital or deposit taxes.

### *Contention of the Bank.*

The Bank claims that the capital and deposit taxes are illegal and void and were imposed without power or authority of law, because Congress has never granted to the Philippine Government power to impose such taxes on a national bank, which is a Government instrumentality.

### *Statutes Involved.*

For the convenience of the Court the pertinent provisions of the following statutes are printed in an appendix to this brief (Exhibits A, B and C, pp. 21-33).

The National Bank Act:

Section 5153 of the Revised Statutes as amended by Act of March 3, 1901, c. 871, Sec. 1, 31 Stat. 1448; Act of March 4, 1907, c. 2913, Sec. 3, 34 Stat. 1290; Act of December 23, 1913, c. 6, Sec. 27, 38 Stat. 274; Act of August 4, 1914, c. 225, 38 Stat. 682 and by Act of June 25, 1930, c. 604, 46 Stat. 809 (12 U. S. C. A. 90).

Section 5211 of the Revised Statutes as amended by Act of February 27, 1877, c. 69, Sec. 1. 19 Stat. 252; Act of December 28, 1922, c. 18, 42 Stat. 1067 and by Act of February 25, 1927, c. 191, Sec. 13, 44 Stat. 1232 (12 U. S. C. A. 161).

Section 5219 of the Revised Statutes as amended by Act of March 4, 1923, c. 267, 42 Stat. 1499, and by Act of March 25, 1926, c. 88, 44 Stat. 223 (12 U. S. C. A. 548).

Section 5329 of the Revised Statutes (12 U. S. C. A. 93).

Section 5240 of the Revised Statutes as amended by Act of February 19, 1875, c. 89, 18 Stat. 329 and by Act of December 23, 1913, c. 6, Section 21, 38 Stat. 271 (12 U. S. C. A. 481).

The Federal Reserve Act:

Section 25, Act of December 23, 1913, c. 6, 38 Stat. 251, 273.

Section 25, Act of December 23, 1913, as amended by Act of September 7, 1916, c. 461, Section 25, 39 Stat. 752, 755.

Philippine Administrative Code together with the enacting clause of the code (Philippine Act, No. 2711, approved March 10, 1917):

Section 1499.

Section 1502.

# POINTS.

## FIRST.

**The National City Bank of New York is an instrumentality of the United States Government.**

The creation of national banks was authorized in 1863 (12 Stat. L. 665) "for carrying into effect national powers granted by the Constitution."

> *Owensboro Nat. Bank* v. *Owensboro,* 173 U. S. 664, 667.

The National Bank Act (R. S. Sec. 5153, 12 U. S. C. A., Sec. 90) makes them depositaries of public money and requires them to act as financial agents of the Government if required:

> "All national banking associations, designated for that purpose by the Secretary of the Treasury, shall be depositaries of public money, under such regulations as may be prescribed by the Secretary; and they may also be employed as financial agents of the Government; and they shall perform all such reasonable duties, as depositaries of public money and financial agents of the Government, as may be required of them."

Section 25 of the Federal Reserve Act authorizes national banking associations "to establish branches in foreign countries or dependencies or insular possessions of the United States for the furtherance of the foreign commerce of the United States and *to act, if required to do so, as fiscal agents of the United States*".

They are "instrumentalities of the Federal Government created for a public purpose and as such necessarily subject to the paramount authority of the United States."

*Owensboro Nat. Bank* v. *Owensboro,* 173 U. S. 664; 667-8;
*Des Moines Nat. Bank* v. *Fairweather,* 263 U. S. 103, 106;
*Iowa-Des Moines Nat. Bank* v. *Bennett,* 284 U. S. 239, 244.

They "are not merely private moneyed institutions but agencies of the United States created under its laws to promote its fiscal policies."

*First Nat. Bank* v. *Anderson,* 269 U. S. 341, 347.

The respondent was incorporated under the National Bank Act on July 5, 1865 (Record, p. 36) and has ever since been a fiscal agent of the United States Government; and, since this action was begun, its Manila Branch has acted as fiscal agent for the United States under the Gold Reserve Act of January 30, 1934 (Record, p. 148).

## SECOND.

**The respondent, being a Government instrumentality, is not subject to taxation by states or dependencies, unless the power is expressly granted by Congress.**

The petitioner (Brief, p. 35) states:

"The presumption that a derivative sovereignty is not intended to tax instrumentalities of a superior sovereign, is after all only a rebuttable presumption; and, like other rebutta-

> ble presumptions, is to be used only as an aid in arriving at the true facts, here as an aid in arriving at the real intent of Congress."

It is submitted that this is not a correct statement of the rule. The inability of a state, territory or dependency to tax the instrumentalities of the sovereign is not based upon *presumption,* but is due to a complete lack of capacity to tax such instrumentalities. The power to tax is a power to retard, impede, burden or destroy; and, since *M'Culloch* v. *State of Maryland* (4 Wheat. 316), it has been the law of this country that states or dependencies cannot tax National Banks, since they are instrumentalities of the United States Government. The reason for the rule was stated by Marshall, *C. J.,* in that case as follows (4 Wheat. 426):

> "This great principle is, that the constitution and the laws made in pursuance thereof are supreme; that they control the constitution and laws of the respective States, and cannot be controlled by them. From this, which may be almost termed an axiom, other propositions are deduced as corollaries, on the truth or error of which, and on their application to this case, the cause has been supposed to depend. These are, 1. That a power to create implies a power to preserve. 2. That a power to destroy, if wielded by a different hand, is hostile to, and incompatible with, these powers to create and to preserve. 3. That where this repugnancy exists, that authority which is supreme must control, not yield, to that over which it is supreme. * * * (p. 436) the States have no power, by taxation or otherwise, to retard, impede, burden or in any manner control, the operations of the constitutional laws enacted by con-

> gress to carry into execution the powers vested in the general government. This is, we think, the unavoidable consequence of that supremacy which the constitution has declared."

While that principle was originally declared only with reference to the States, it was later extended to the territories.

> *Talbott* v. *Silver Bow Co.*, 139 U. S. 438, 441.

And this Court has recently decided that the insular possessions and dependencies of the United States have no power to tax National Banks, unless that power has been expressly conferred by Congress.

> *Domenech* v. *National City Bank*, 294 U. S. 199, 204-5.

In that case it was held that Puerto Rico could not tax a branch of the respondent located within its territory, except as expressly permitted by Act of Congress. This Court held (pp. 204-5):

> "Puerto Rico, an island possession, like a territory, is an agency of the federal government, having no independent sovereignty comparable to that of a state in virtue of which taxes may be levied. Authority to tax must be derived from the United States. But like a state, though for a different reason, such an agency may not tax a federal instrumentality. A state, though a sovereign, is precluded from so doing because the Constitution requires that there be no interference by a state with the powers granted to the federal government. *A territory or a possession may not do so because*

> *the dependency may not tax its sovereign.* True the Congress may consent to such taxation; but *the grant to the Island of a general power to tax should not be construed as a consent. Nothing less than an act of Congress clearly and explicitly conferring the privilege will suffice.*" (Italics ours.)

The power to tax instrumentalities of the United States Government cannot, therefore, be implied from any general power to levy taxes which has been conferred upon the Philippine Government by Act of Congress:

> "The grant to the Island of a general power to tax should not be construed as a consent. Nothing less than an act of Congress clearly and explicitly conferring the privilege will suffice."

The petitioner does not claim that Congress has passed any act explicitly authorizing the capital and deposit taxes here in question, in addition to the income tax, which was paid without objection.

If dependencies may tax branches of National Banks located within their borders, it follows that they have power to tax forts, warships, lighthouses and other property of the sovereign located within their borders and there maintained in the public interest. The Supreme Court of the Philippine Islands has correctly decided that no such power exists.

> *Standard Oil Co. of New York* v. *Posadas*, 55 Phil. Rep. 715.

In that case it was held that the Philippine Government could not impose a tax on sales of oil made in the Philippines to the United States Army and Navy.

See also:

*Wisconsin Cent. R. R. Co.* v. *Price Co.*, 133 U. S. 496, 504;
*Asiatic Petroleum Co.* v. *U. S.*, 65 Ct. of Cl. 100, 112.

The same claim, made on behalf of the Philippine Government as long ago as 1912, was overruled by the Attorney General (29 Opinions of Attorneys General, 442) who held that the grant of a general power to tax did not give power to tax goods imported into the Islands for the use of the United States Government. He further held that the fact that Congress had not annulled the Philippine Tax Act was unimportant, as power to annul was reserved only for Acts whose policy Congress does not approve; and that *ultra vires* Acts need not be annulled, as they are void, not being an exercise of delegated powers.

These rulings dispose of petitioner's contention (Brief, p. 40) that exemption of instrumentalities of the United States Government from taxation violates the requirement of the Jones Act, Section 3, "that the rule of taxation in said islands shall be uniform". This provision was not a surrender of the Sovereign's immunity from taxation. It was not intended to prescribe *what property* was subject to tax, but merely required that all property which *was* subject to taxation should be taxed uniformly.

## THIRD.

**The Philippine branches are offices of the respondent.**

The petitioner states (Brief, p. 45):

> "Whatever else those so-called 'branches' of the National City Bank in the Philippine

> Islands may really be—if there is any legal authority whatever for their existence at all—they are not really branches of the National City Bank of New York under Section 25 of the Federal Reserve Act or any other act of the United States. They owe their existence in the Philippine Islands, and their continued tolerance there wholly to Philippine Law."

I. It is idle to contend that these branches are not, in fact, a part of the National City Bank of New York. They have no separate corporate franchise or capital.

They are operated under powers of attorney executed by the Head Office of the National City Bank of New York (Record, Ex. E, pp. 71-80) and pursuant to its By-laws (Record, Ex. C, pp. 53-54). All the activities of these branches are directed and controlled by the Head Office of the National City Bank of New York (Record, pp. 14-16). Their operations are regularly inspected by representatives of the respondent's Head Office in New York (Record, pp. 12-13). All that belongs to them is property of the respondent.

As required by the National Bank Act (R. S. Sec. 5211, 12 U. S. C. A., Sec. 161; R. S., Sec. 5240, 12 U. S. C. A., Sec. 481), they make periodical reports to the Comptroller of the Currency and are subjected to periodical examinations by national bank examiners under the direction of the Comptroller of the Currency (Record, pp. 13, 23). The respondent's Head Office in New York is liable for any failure of such branches to perform their obligations.

*Sokoloff* v. *National City Bank,* 239 N. Y. 158, 167;

*Sokoloff* v. *National City Bank,* 250 N. Y. 69, 82;

*Silverman* v. *National City Bank,* 133 N. Y. Misc. 201, 207.

The Philippine Government itself has officially recognized that they are branches of the respondent by collecting income taxes (Record, pp. 7, 25; Ex. H, pp. 109-10) and by requiring a report of respondent's entire capital stock (Record, p. 19; Ex. F, pp. 83-108, in particular p. 85).

In view of these facts, it cannot be disputed that the Manila and Cebu Branches of the National City Bank of New York are a part of the organization of the respondent and that the taxes sought by the petitioner to be imposed on them are imposed upon the respondent.

*M'Culloch* v. *State of Maryland,* 4 Wheat. 316, 424-5;
*Domenech* v. *National City Bank,* 294 U. S. 199, 204.

In the *Domenech* case this Court held:

> "Taxation of a bank's branch is taxation of the bank itself."

The petitioner has attempted to tax the respondent through its branches, contrary to the Constitution and laws of the United States.

II. The petitioner contends that the Federal Reserve Act did not authorize the opening of these branches, stating (Brief, pp. 45-6):

> "The (Federal Reserve) Board has no power,—and never has had any power,—to license a branch bank in the Philippine Islands. The only power of the Board to license a branch of a national bank to be established outside of the continental United States,—or for any

such branch to be organized or to exist or to carry on business under any law of the United States,—is Section 25 of the Federal Reserve Act as amended; which does not authorize such a branch in the Philippine Islands, because the Act does not expressly mention those Islands, and it has never been extended there."

This contention is wholly immaterial to the question whether the Philippine Government has power to tax a National Bank. The respondent is lawfully in the Philippines, doing business under a permit granted by the Federal Reserve Board, which expressly found that it was acting "under the laws of the United States of America."

If the respondent has exceeded in any way the powers granted to it by law, the remedy provided by the National Bank Act (R. S., Sec. 5239; 12 U. S. C. A. Sec. 93) is "a suit brought for that purpose by the Comptroller of the Currency in his own name" in a district or territorial court of the United States.

No power to question the charter powers of a national bank is vested by law in the petitioner or in any representative of the Philippine Government.

However, although the question is entirely irrelevant to the issues in this action, the respondent was authorized by law to open its Philippine branches; and the proper office of the Philippine Government has certified that the order was "duly filed" with it (Record, p. 39); also respondent's Articles of Incorporation (Record, pp. 29-30), its By-Laws (Record, p. 43) and its Power of Attorney to the manager of its Philippine branches (Record, p. 71).

They were opened by the Bank pursuant to express authority granted by order of the Federal Reserve Board (Record, pp. 42-3), which found that the application was "properly made under the laws of the United States of America and should be granted."

Section 25 of the Federal Reserve Act of December 23, 1913 (38 Stat., Ch. 6, p. 251, Sec. 25) expressly authorized national banking associations possessing a capital and surplus of one million dollars or more to file application with the Federal Reserve Board for authority to establish branches "in foreign countries *or dependencies* of the United States for the furtherance of the foreign commerce of the United States and to act, if required to do so, as fiscal agents of the United States"; and this statute was amended in 1917 so as to substitute for the words "in foreign countries or dependencies of the United States", the words "in foreign countries or dependencies or insular possessions of the United States" (Act of September 7, 1916, 39 Stat., 755, Ch. 461).

This provision was an extension of the charter powers of National Banks having a capital of over one million dollars. It was not an extension of the Federal Reserve Act or of the National Bank Act either to foreign countries or to dependencies of the United States. Indeed, Congress had no power to extend those acts to foreign countries, although branches of National Banks which availed themselves of the power to open such branches carried the National Bank Act with them, into foreign countries and dependencies of the United States, so far as their charter powers and privileges were concerned.

It could not have been contemplated that these branches should operate in the Philippine Islands otherwise than in accordance with the laws of the United States, under which the Bank was organized.

> "Every corporation carries its charter wherever it goes, for that is the law of its existence."

*Relfe* v. *Rundle,* 103 U. S. 222, 226;

*Canada Southern R. Co.* v. *Gebhard,* 109 U. S. 527, 537.

This Court has held (*Talbott* v. *Silver Bow County,* 139 U. S. 438, 443; *Domenech* v. *National City Bank,* 294 U. S. 199, 204) that Congress intended "to create a national banking system coextensive with the territorial limits of the United States"; and this Court held, in the *Talbott* case, that the consent to tax, given by Section 5219 of the National Bank Act, extended to the territories, although they were not expressly mentioned in the Act.

The Philippine Islands were ceded to the United States by the Treaty of Peace with Spain on April 11, 1899 (48 U. S. C. A., Sec. 1001). They were "dependencies" of the United States on December 23, 1913, when the Federal Reserve Act became law.

34 Opinions of Attorneys General 287, 291 (Opinion of Hon. Harlan F. Stone to the Secretary of War, April 30, 1924);
34 Opinions of Attorneys General 460, 465-6 (Opinion of Hon. John G. Sargent, April 17, 1925).

The Federal Reserve Act was amended on September 7, 1916 (39 Stat., 755), by adding after the word "dependencies" the words "or insular possessions". The Philippine Islands were at that time and in 1931, when these taxes were imposed, a dependency and an insular possession of the United States, and they are still a dependency and an insular possession of the United States and will continue to be so for several years, under the Act providing for their ultimate independence, recently adopted by Congress.

By the expression "foreign countries or dependencies or insular possessions of the United States" National Banks were authorized to open branches anywhere in the world outside of the continental United States.

The petitioner's contention would require that this general grant of power should be restricted by implication, so as to read "in foreign countries or dependencies or insular possessions of the United States except in the Philippine Islands". Such a limitation will not be read into a statute by the courts.

No reason is suggested why the Philippine Islands alone, of all the places subject to the jurisdiction of the United States, should be deprived of the services of National Banks.

The action of the Federal Reserve Board, the duly constituted agency of the Government for the purpose of determining whether permission should be granted to a National Bank to open branches in the Philippines, in granting permission to the respondent in 1930 to open its branches in the Philippine Islands "under the laws of the United States of America" and the action of the Comptroller of the Currency in requiring reports and making examinations of these Philippine branches are administrative interpretations of the Federal Reserve Act which are entitled to great respect.

*U. S.* v. *Moore,* 95 U. S. 760;
*Robertson* v. *Downing,* 127 U. S. 607;
*U. S.* v. *Alabama R. R. Co.,* 142 U. S. 615;
*U. S.* v. *Hermanos y Compania,* 209 U. S. 337.

The petitioner contends (Brief, p. 32) that the fact that the Federal Reserve Board granted no

applications to open branches in the Philippines prior to 1916 amounts to an administrative construction of the Federal Reserve Act as not permitting the opening of such branches. This contention has no force, however, because of the further fact, stated by petitioner (Brief, p. 32), that no such application was made to the Federal Reserve Board prior to 1916.

This whole contention that the Philippine branches are not authorized by law is a new one in this Court. It was not raised in the petitioner's answer (Record, p. 8) or considered in the opinion of the Court below and is wholly immaterial to any issue in this case.

III. The petitioner raises the question whether the Federal Reserve Act and the National Bank Act extend to the Philippine Islands under the provisions of the Foraker Act and of the Jones Act. This question has no bearing whatever on the question here presented, whether the Philippine Government has power to tax the respondent on the alleged capital and on the deposits of its Philippine branches, having imposed a tax on their income. It has no bearing whatever on the question whether, by Section 25 of the Federal Reserve Act, *the charter powers of national banks,* having the required amount of capital, were extended so as to authorize them to open branches in dependencies of the United States, including the Philippine Islands. The various rulings of Attorneys General, cited by petitioner, that certain sumptuary and regulatory Acts of Congress, such as the Volstead Act, the Narcotic Drugs Act and the National Industrial Recovery Act do not extend to the Philippines also have no bearing on those questions.

By Section 25 of the Federal Reserve Act Congress declared, in the most explicit terms, that national banks, having a certain amount of capital, should have power to open branches in foreign countries and in dependencies of the United States, including the Philippines. It was not essential to such charter power that the Federal Reserve Act or the National Bank Act should be extended to the dependencies, any more than that they should be extended to foreign countries, in which also national banks were authorized by that section to open branches. Those Acts could not be extended to foreign countries; and there was no need that they should be extended to the dependencies, in order to effectuate this extension of the charter powers of national banks.

The Philippine branches were lawfully opened under Section 25 of the Federal Reserve Act and with the permission of the Federal Reserve Board. They are lawfully in the Philippines; and no claim is made by the petitioner that the respondent has not duly complied with all requirements of Philippine law, relating to its right to do business in the Philippines. The question whether the Federal Reserve and National Bank Acts are now in force in the Philippines is an interesting one upon which much might be said; but we shall not discuss it here, since the only question here presented is, whether the Philippine Government has the power, having levied and collected an income tax, to tax the respondent upon the alleged capital and the deposits of its Philippine branches.

## FOURTH.

**This case is controlled by the *Domenech* case.**

In *Domenech* v. *National City Bank* (294 U. S. 199), this Court has very recently held that "a dependency may not tax its sovereign"; that a dependency or insular possession of the United States has no power to tax the local branches of a national bank, unless such power has been expressly conferred by Congress; that the grant of a general power to tax is not a consent to the taxation of national banks, and that "nothing less than an Act of Congress clearly and explicitly conferring the privilege will suffice".

The petitioner does not claim that any such clear and explicit consent has been given by Congress to the Philippine Government to levy the taxes here in question. Therefore, under the general rule laid down by the Court in the *Domenech* case, that "the dependency may not tax its sovereign", these taxes are clearly unauthorized and illegal.

## *FIFTH.*

***The judgment of the Supreme Court of the Philippine Islands should be affirmed, with costs.***

Washington, November 20, 1935.

HARRY W. FORBES,
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CARL A. MEAD,
FRANK A. F. SEVERANCE,
*Of Counsel.*

# APPENDIX.*

## EXHIBIT A.

### THE NATIONAL BANK ACT.

Section 5153 of the Revised Statutes as amended by Act of March 3, 1901, c. 871, Sec. 1, 31 Stat. 1448; Act of March 4, 1907, c. 2913, Sec. 3, 34 Stat. 1290; Act of December 23, 1913, c. 6, Sec. 27, 38 Stat. 274; Act of August 4, 1914, c. 225, 38 Stat. 682 and Act of June 25, 1930, c. 604, 46 Stat. 809 (12 U. S. C, A. 90).

"*Section 90. Depositaries of public moneys and financial agents of Government.* All national banking associations, designated for that purpose by the Secretary of the Treasury, shall be depositaries of public money, under such regulations as may be prescribed by the Secretary; and they may also be employed as financial agents of the Government; and they shall perform all such reasonable duties, as depositaries of public money and financial agents of the Government, as may be required of them. The Secretary of the Treasury shall require the associations thus designated to give satisfactory security, by the deposit of United States bonds and otherwise, for the safekeeping and prompt payment of the public money deposited with them, and for the faithful performance of their duties as financial agents of the Government: *Provided,* that the Secretary shall, on or before the first of January of each year, make a public statement of the securities required during that year for such deposits. And every association so designated as receiver or depositary of the public money shall take and receive at par all

* This appendix contains the text of relevant portions of statutes in force in 1931 when the tax in controversy was levied.

of the national currency bills, by whatever association issued, which have been paid into the Government for internal revenue, or for loans or stocks: *Provided,* That the Secretary of the Treasury shall distribute the deposits herein provided for, as far as practicable, equitably between the different states and sections.

Any association may, upon the deposit with it of public money of a State or any political subdivision thereof, give security for the safekeeping and prompt payment of the money so deposited, of the same kind as is authorized by the law of the State in which such association is located in the case of other banking institutions in the State."

Section 5211 of the Revised Statutes as amended by Act of February 27, 1877, c. 69, Sec. 1, 19 Stat. 252; Act of December 28, 1922, c. 18, 42 Stat. 1067, and Act of February 25, 1927, c. 191, Sec. 13, 44 Stat. 1232 (12 U. S. C. A. 161):

"*Section 161. Reports to Comptroller of the Currency; publication.* Every association shall make to the Comptroller of the Currency not less than three reports during each year, according to the form which may be prescribed by him, verified by the oath or affirmation of the president or of the cashier, or of a vice president, or of an assistant cashier of the association designated by its board of directors to verify such reports in the absence of the president and cashier, taken before a notary public properly authorized and commissioned by the State in which such notary resides and the association is located, or any other officer having an official seal, authorized in such State to administer oaths, and attested by the signature of at least three of

the directors. Each such report shall exhibit, in detail and under appropriate heads, the resources and liabilities of the association at the close of business on any past day by him specified, and shall be transmitted to the Comptroller within five days after the receipt of a request or requisition therefor from him; and the statement of resources and liabilities, together with acknowledgment and attestation in the same form in which it is made to the comptroller shall be published in a newspaper published in the place where such association is established, or if there is no newspaper in the place, then in the one published nearest thereto in the same county, at the expense of the association; and such proof of publication shall be furnished as may be required by the comptroller. The comptroller shall also have power to call for special reports from any particular association whenever in his judgment the same are necessary in order to obtain a full and complete knowledge of its condition."

Section 5219 of the Revised Statutes, as amended by the Act of March 4, 1923, c. 267, 42 Stat. 1499, and March 25, 1926, c. 88, 44 Stat. 223 (12 U. S. C. A. 548):

"*Section 548. State taxation.* The legislature of each State may determine and direct, subject to the provisions of this section, the manner and place of taxing all the shares of national banking associations located within its limits. The several States may (1) tax said shares, or (2) include dividends derived therefrom in the taxable income of an owner or holder thereof, or (3) tax such associations on

their net income, or (4) according to or measured by their net income, provided the following conditions are complied with:

1. (a) The imposition by any State of any one of the above four forms of taxation shall be in lieu of the others, except as hereinafter provided in subdivision (c) of this clause.

(b) In the case of a tax on said shares the tax imposed shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State coming into competition with the business of national banks; Provided, that bonds, notes, or other evidences of indebtedness in the hands of individual citizens not employed or engaged in the banking or investment business and representing merely personal investments not made in competition with such business, shall not be deemed moneyed capital within the meaning of this section.

(c) In case of a tax on or according to or measured by the net income of an association, the taxing State may, except in case of a tax on net income, include the entire net income received from all sources, but the rate shall not be higher than the rate assessed upon other financial corporations nor higher than the highest of the rates assessed by the taxing State upon mercantile, manufacturing, and business corporations doing business within its limits; *Provided, however,* That a State which imposes a tax on or according to or measured by the net income of, or a franchise or excise tax on, financial, mercantile, manufacturing, and business corporations organized under its own laws or laws of other States and also imposes

a tax upon the income of individuals, may include in such individual income dividends from national banking associations located within the State on condition that it also includes dividends from domestic corporations and may likewise include dividends from national banking associations located without the State on condition that it also includes dividends from foreign corporations, but at no higher rate than is imposed on dividends from such other corporations.

(d) In case the dividends derived from the said shares are taxed, the tax shall not be at a greater rate than is assessed upon the net income from other moneyed capital.

2. The shares of any national banking association owned by non-residents of any State, shall be taxed by the taxing district or by the State where the association is located and not elsewhere; and such association shall make return of such shares and pay the tax thereon as agent of such non-resident shareholders.

3. Nothing herein shall be construed to exempt the real property of associations from taxation in any State or in any subdivision thereof, to the same extent, according to its value, as other real property is taxed.

4. The provisions of section 5219 of the Revised Statutes of the United States as in force prior to March 25, 1926, shall not prevent the legalizing, ratifying, or confirming by the States of any tax heretofore paid, levied, or assessed upon the shares of national banks, or the collecting thereof, to the extent that such tax would be valid under said section."

Section 5239 of the Revised Statutes (12 U. S. C. A. 93):

> "*Section 93. Violation of provisions of chapter; forfeiture of franchise; personal liability of directors.* If the directors of any national banking association shall knowingly violate, or knowingly permit any of the officers, agents, or servants of the association to violate any of the provisions of this chapter, all the rights, privileges, and franchises of the association shall be thereby forfeited. Such violation shall, however, be determined and adjudged by a proper district, or Territorial court of the United States, in a suit brought for that purpose by the Comptroller of the Currency, in his own name, before the association shall be declared dissolved. And in cases of such violation, every director who participated in or assented to the same shall be held liable in his personal and individual capacity for all damages which the association, its shareholders, or any other person, shall have sustained in consequence of such violation."

Section 5240 of the Revised Statutes as amended by Act of February 19, 1875, c. 89, 18 Stat. 329, and Act of December 23, 1913, c. 6, Sec. 21, 38 Stat. 271 (12 U. S. C. A. 481):

> "*Section 481. Appointment of examiners; examination of member banks, State banks, and trust companies; reports.* The Comptroller of the Currency with the approval of the Secretary of the Treasury, shall appoint examiners who shall examine every member bank other than those expressly excepted by section 330 of this title, at least twice in each calendar year and oftener if considered necessary: *Pro-*

*vided, however,* That the Federal Reserve Board may authorize examination by the State authorities to be accepted in the case of State banks and trust companies and may at any time direct the holding of a special examination of State banks or trust companies that are stockholders in any Federal reserve bank. The examiner making the examination of any national bank, or of any other member bank, shall have power to make a thorough examination of all the affairs of the bank and in doing so he shall have power to administer oaths and to examine any of the officers and agents thereof under oath and shall make a full and detailed report of the condition of said bank to the Comptroller of the Currency."

## EXHIBIT B.

### THE FEDERAL RESERVE ACT.

Act of December 23, 1913, c. 6, Section 25, 38 Stat. 251, 273:

"*Sec. 25.* Any national banking association possessing a capital and surplus of $1,000,000 or more may file application with the Federal Reserve Board, upon such conditions and under such regulations as may be prescribed by the said board, for the purpose of securing authority to establish branches in foreign countries or dependencies of the United States for the furtherance of the foreign commerce of the United States, and to act, if required to do so, as fiscal agents of the United States. Such application shall specify, in addition to the name and capital of the banking association filing it, the place or places where the banking

operations proposed are to be carried on, and the amount of capital set aside for the conduct of its foreign business. The Federal Reserve Board shall have power to approve or to reject such application if, in its judgment, the amount of capital proposed to be set aside for the conduct of foreign business is inadequate, or if for other reasons the granting of such application is deemed inexpedient. Every national banking association which shall receive authority to establish foreign branches shall be required at all times to furnish information concerning the condition of such branches to the Comptroller of the Currency upon demand, and the Federal Reserve Board may order special examinations of the said foreign branches at such time or times as it may deem best. Every such national banking association shall conduct the accounts of each foreign branch independently of the accounts of other foreign branches established by it and of its home office, and shall at the end of each fiscal period transfer to its general ledger the profit or loss accruing at each branch as a separate item."

Act of December 23, 1913, c. 6, Sec. 25, 38 Stat. 273, as amended by Act of September 7, 1916, c. 461, Sec. 25, 39 Stat. 752, 755:

"*Sec. 25.* Any national banking association possessing a capital and surplus of $1,000,000 or more may file application with the Federal Reserve Board for permission to exercise, upon such conditions and under such regulations as may be prescribed by the said board, either or both of the following powers:

"First. To establish branches in foreign countries or dependencies or insular posses-

sions of the United States for the furtherance of the foreign commerce of the United States, and to act if required to do so as fiscal agents of the United States.

"Second. To invest an amount not exceeding in the aggregate ten per centum of its paid-in capital stock and surplus in the stock of one or more banks or corporations chartered or incorporated under the laws of the United States or of any State thereof, and principally engaged in international or foreign banking, or banking in a dependency or insular possession of the United States either directly or through the agency, ownership, or control of local institutions in foreign countries, or in such dependencies or insular possessions.

"Such application shall specify the name and capital of the banking association filing it, the powers applied for, and the place or places where the banking operations proposed are to be carried on. The Federal Reserve Board shall have power to approve or to reject such application in whole or in part if for any reason the granting of such application is deemed inexpedient, and shall also have power from time to time to increase or decrease the number of places where such banking operations may be carried on.

"Every national banking association operating foreign branches shall be required to furnish information concerning the condition of such branches to the Comptroller of the Currency upon demand, and every member bank investing in the capital stock of banks or corporations described under sub-paragraph two of the first paragraph of this section shall be required to furnish information concerning the condition of such banks or corporations to the

Federal Reserve Board upon demand, and the Federal Reserve Board may order special examinations of the said branches, banks, or corporations at such time or times as it may deem best.

"Before any national bank shall be permitted to purchase stock in any such corporation the said corporation shall enter into an agreement or undertaking with the Federal Reserve Board to restrict its operations or conduct its business in such manner or under such limitations and restrictions as the said board may prescribe for the place or places wherein such business is to be conducted. If at any time the Federal Reserve Board shall ascertain that the regulations prescribed by it are not being complied with, said board is hereby authorized and empowered to institute an investigation of the matter and to send for persons and papers, subpoena witnesses, and administer oaths in order to satisfy itself as to the actual nature of the transactions referred to. Should such investigation result in establishing the failure of the corporation in question, or of the national bank or banks which may be stockholders therein, to comply with the regulations laid down by the said Federal Reserve Board, such national banks may be required to dispose of stock holdings in the said corporation upon reasonable notice.

"Every such national banking association shall conduct the accounts of each foreign branch independently of the accounts of other foreign branches established by it and of its home office, and shall at the end of each fiscal period transfer to its general ledger the profit or loss accrued at each branch as a separate item.

"Any director or other officer, agent, or employee of any member bank may, with the approval of the Federal Reserve Board, be a director or other officer, agent, or employee of any such bank or corporation above mentioned in the capital stock of which such member bank shall have invested as hereinbefore provided, without being subject to the provisions of section eight of the Act approved October fifteenth, nineteen hundred and fourteen, entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes'." Approved, September 7, 1916.

## EXHIBIT C.

### PHILIPPINE ADMINISTRATIVE CODE.

Sections 1499 and 1502 of the Philippine Administrative Code together with the enacting clause of the Code (Philippine Act, No. 2711, approved March 10, 1917):

"For the purpose of adapting it to the Jones Law and the Reorganization Act, Act Numbered Two thousand six hundred and fifty-seven, known as The Administrative Code, is hereby amended in certain particulars; and said Act shall hereafter read as follows:

*Section 1. Title of Act.*—This Act shall be known as the Administrative Code.

*Section 1499. Tax on capital, deposits, and circulation of banks.*—Subject to the exemption herein made there shall be collected from banks the following taxes on capital, deposits and circulations:

(a) Upon the capital employed by the bank,

for each month, one twenty-fourth of one per centum.

(b) Upon the average amount of deposits of money, subject to payment by check or draft, or represented by certificates of deposit, or otherwise, whether payable on demand, or on some future day, for each month, one-eighteenth of one per centum.

(c) Upon the average amount of circulation issued by the bank, including as circulation all notes and other obligations calculated or intended to circulate or be used as money, but not including such as may be retained in the vault of the bank or redeemed and on deposit for said bank, for each month, one-twelfth of one per centum.

(d) Upon the average amount of such circulation issued as above, being beyond the amount of the paid-in capital of the bank, for each month, and as an additional tax, one per centum.

'Bank' as herein used, includes every incorporated or other bank, and every person, association, or company having a place of business where credits are opened by the deposit or collection of money or currency subject to be paid or remitted upon draft, check, or order, or where money is advanced or loaned on stocks, bonds, bullion, bills of exchange, or promissory notes are received for discount or for sale.

'Capital employed' does not include money borrowed or received from time to time in the usual course of business from any person not a partner of or interested in such bank; and no tax shall be imposed on the capital em-

ployed by any person whose sole business is lending money on real-estate security.

*Section 1502. Computing resources of bank incorporated abroad.*—The amount of capital used by a bank within the Philippine Islands, when such bank is a branch of a bank incorporated under laws of the United States or a foreign country, shall, for the purposes of assessment hereunder, be determined in the following manner: The total amount of the capital of the bank shall be ascertained, and, likewise, the total amount of the net earnings of the bank accruing during the preceding six months, and also the total amount of the net earnings accruing from the bank's business conducted in the Philippine Islands; and such a proportion of the total capital of the bank shall be deemed to have been employed in the Philippine Islands as the net earnings in the Philippine Islands bear to the total net earnings of the bank."

# EXHIBIT D.

UNITED STATES OF AMERICA,

PHILIPPINE ISLANDS,

## SUPREME COURT OF THE PHILIPPINE ISLANDS.

---

THE NATIONAL CITY BANK OF NEW YORK,
*Plaintiff-Appellant,*

—versus—

JUAN POSADAS, JR., Collector of Internal Revenue of the Philippine Islands,
*Defendant-Appellant.*

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PREVAILING OPINION.

BUTTE, *J.*:

Under Section 1499 of the Administrative Code, the defendant Collector of Internal Revenue of the Philippine Islands assessed against the National City Bank of New York as capital and deposit taxes for the first half of the year 1931 the sum of P77,324.11. On October 23, 1931, the bank paid said taxes under protest. The grounds of the protest were stated as follows:

> "1. That the National City Bank of New York is a national banking association duly organized under the United States National Banking Act and is an agency of the United States created under its laws to promote the fiscal policies of the United States.

"2. That the National City Bank of New York has been duly authorized by the Federal Reserve Board to establish a branch in the Philippine Islands, and is now operating the same under the provisions of the United States Federal Reserve Act.

"3. That no state, territory or possession of the United States or any subdivision thereof has the power to tax national banks except as Congress expressly permits; that no such power has been granted to the Philippine Government.

"4. That under the provisions of the National Banking Act (sec. 548, Title 12, U. S. Code) each state may tax national banking associations in any one of four forms but the imposition of any one of such forms shall be in lieu of the others except that in the case of a tax upon net income, individuals may be taxed upon dividends from national banking associations if the law of the state provides for such a tax upon all business corporations and dividends therefrom.

"5. That the Philippine Islands imposes a tax upon net income and is therefore without power to impose any capital deposit, or other tax of any kind upon such national banking association."

On June 7, 1932, the bank filed its suit to recover the said taxes and alleges substantially the same grounds as those set out in the protest when the payment was made. Upon the hearing of the cause it was established by the evidence that the National City Bank of New York, duly organized under the Act of Congress of June 3, 1864, is located at No. 55 Wall Street in the City of New York with a present capital of $110,000,000. On January 23, 1930, the

Federal Reserve Board authorized said bank to establish branches in Manila and Cebu, Philippine Islands. These branches were in operation during the first half of the year 1931, the period covered by the taxes here in question.

On April 30, 1932, the plaintiff bank filed with the Bureau of Internal Revenue of the Philippine Islands a return of its net income from its branches in Manila and Cebu for the year 1931, a total of P518,871.61, upon which on June 3, 1932, it paid an income tax of P15,566.15 in accordance with the Internal Revenue laws of the Philippine Islands. This tax was paid without protest.

The trial court sustained the capital tax and ordered the deposit tax refunded to the plaintiff bank. Both parties have appealed to this court.

The Collector of Internal Revenue submits the following assignments of error:

> "1. The trial court erred in holding that the branch of the National City Bank of New York in Manila, Philippine Islands, is an instrumentality of the United States Government.
>
> "2. The trial court erred in holding that the branch of the National City Bank of New York in Manila, Philippine Islands, is only subject to the payment of taxes on its capital and not to the payment of taxes on its deposits also as provided for in section 1499 of Act No. 2711 (The Administrative Code), as amended.
>
> "3. The trial court erred in ordering the defendant to return to the plaintiff the amount of P61,219.43, which represents the tax on its deposits for the first half of the year 1931, paid

under protest by the said plaintiff to the defendant.

"4. The trial court erred in denying defendant's motion for a new trial."

At the outset it should be noted that the branches of the National City Bank of New York in Manila and Cebu are not separate legal entities. The Act of Congress of December 23, 1913 (U. S. C. Title 12, Sec. 601) provides in part:

> "Sec. 601. *Authorization; conditions and regulations.*—Any national banking association possessing a capital and surplus of $1,000,000 or more may file application with the Federal Reserve Board for permission to exercise, upon such conditions and under such regulations as may be prescribed by the said board, either or both of the following powers:
>
> "First. To establish branches in foreign countries or dependencies or insular possessions of the United States for the furtherance of the foreign commerce of the United States, and to act if required to do so as fiscal agents of the United States."

It is shown by the evidence in this case that the local branches of the National City Bank of New York have no separate corporate franchise, no separate capital stock, and are operated directly by the bank through officers and managers appointed and controlled by the National City Bank of New York. The Act of Congress, *supra,* authorizing the establishment of branches clearly does not contemplate separate legal entities for it makes no provision for their form of organization or the amount of capital to be invested therein, as is done with reference to

investments by a national bank in other banks or corporations engaged in banking in a dependency or insular possession of the United States as set out in the second paragraph of U. S. C. Title 12, Section 601, *supra*. In a word, a "branch" is simply an extension of the business of a national bank to foreign countries, dependencies or insular possessions of the United States. The branch of the National City Bank of New York in Manila is the National City Bank of New York doing business in Manila.

On March 19, 1930, this bank filed with the mercantile register of the Bureau of Commerce of the Philippine Islands copies of its articles of incorporation, its by-laws, the power of attorney granted to its local manager and the order of the Federal Reserve Board granting permission to the National City Bank of New York to establish branches in Manila and Cebu. The very taxes here in question are assessed by the Government of the Philippine Islands against the "National City Bank of New York" and the receipts therefor were issued to the "National City Bank of New York" and quite properly so, for the branch as such has neither assets nor liabilities. It is true that the bank filed with the Collector of Internal Revenue a statement (Exhibit J) in which it undertook by an arbitrary calculation to furnish the Collector an estimated local capital of its Manila branch as a basis for the assessment of the capital tax. This was computed upon the following proportion: the capital, surplus and undivided profits of the bank ($224,554,298.54) is to its local capital as the total profits of the bank ($10,690,303.41) is to the profits of the Philippine branch ($151,851.11). This computation for the first half of the year 1931 resulted in a hypothetical local capital of P12,883,744.56. But this computation, submitted as it was under com-

pulsion and solely for the purpose of estimating the tax which was paid under protest, does not in our judgment constitute any sort of an admission on the part of the bank, and cannot be invoked here to create a corporate entity which does not exist in fact.

In the light of the foregoing the Collector's first assignment of error must be held to relate to the National City Bank of New York. That a national bank is an instrumentality of the government of the United States is a proposition supported both by actual facts and by so many decisions since the passage of the first national banking act, approved June 3, 1864, that it requires no citation of authorities and cannot be questioned now. It makes no difference in principle whether the bank functions as such instrumentality in its home office or in a branch office. The very act authorizing the establishment of branches provides that such branches may be established "for the furtherance of the foreign commerce of the United States and to act if required to do so as fiscal agents of the United States". Since the appeal in the present case was lodged in this court, the branch in Manila of the National City Bank of New York has performed an important fiscal service to the United States Government as a depository of gold under the Gold Reserve Act of January 30, 1934. There is, therefore, no merit in the Collector's first assignment of error.

We shall consider together the Collector's second assignment of error which relates to the payment of the tax on deposits and the bank's assignment of error which relates to the capital tax.

Section 1499 of the Administrative Code provides:

> "*Tax on capital, deposits, and circulation of banks.*—Subject to the exemption herein

made there shall be collected from banks the following taxes on capital, deposits, and circulation:

"(a) Upon the capital employed by the bank, for each month, one twenty-fourth of one per centum.

"(b) Upon the average amount of deposits of money, subject to payment by check or draft, or represented by certificates of deposits, or otherwise, whether payable on demand, or on some future day, for each month, one-eighteenth of one per centum.

"(c) Upon the average amount of circulation issued by the bank, including as circulation all notes and other obligations calculated or intended to circulate or be used as money but not including such as may be retained in the vault of the bank or redeemed and on deposits for said bank, for each month, one-twelfth of one per centum.

"(d) 'Bank' as herein used, includes every incorporated or other bank, and every person, association, or company having a place of business where credits are opened by the deposit or collection of money or currency subject to be paid or remitted upon draft, check, or order, or where money is advanced or loaned on stocks, bonds, bullion, bills of exchange, or promissory notes are received for discount or for sale.

"'Capital employed' does not include money borrowed or received from time to time in the usual course of business from any person not a partner of or interested in such bank; and no tax shall be imposed on the capital employed by any person whose sole business is lending money on real-estate security."

Many attempts have been made by the several states and territories of the United States to levy taxes in one form or another upon national banks without the consent of Congress but they have uniformly failed. Chief Justice White, in the case of *Owensboro National Bank* v. *Owensboro,* 173 U. S. 664, 667, 43 Law Ed. 850, 852, which involved a franchise tax, stated the general principle thus:

> "Early in the history of this government, in cases affecting the Bank of the United States, it was held that an agency, such as that bank was adjudged to be, created for carrying into effect national powers granted by the Constitution, was not in its capital, franchises, and operations subject to the taxing powers of a state. *M'Culloch* v. *Maryland,* 4 Wheat. 316 (4:579); *Osborn* v. *Bank of the United States,* 9 Wheat. 738 (6:204).
>
> "The principles settled by the cases just referred to and subsequent decisions were thus stated by this court in *Davis* v. *Elmira Savings Bank,* 161 U. S. 283 (40:701):
>
> "'National banks are instrumentalities of the Federal Government, created for a public purpose, and as such necessarily subject to the paramount authority of the United States. It follows that an attempt, by a state, to define their duties or control the conduct of their affairs is absolutely void, wherever such attempted exercise of authority expressly conflicts with the laws of the United States, and either frustrates the purpose of the national legislation or impairs the efficiency of these agencies of the Federal Government to discharge the duties for the performance of which they were created. These principles are axiomatic, and are sanc-

tioned by the repeated adjudications of this Court.'

"It follows then necessarily from these conclusions that the respective states would be wholly without power to levy any tax, either direct or indirect, upon the national banks, their property, assets, or franchises, were it not for the permissive legislation of Congress.

"The first act providing for the organization of national banks, passed February 25, 1863, chap. 58 (12 Stat. at L. 665), contained no grant of power to the states to tax national banks in any form whatever. Doubtless the far-reaching consequence to arise from depriving the states of the source of revenue which would spring from the taxation of such banks, and the error of not conferring the power to tax, early impressed itself upon Congress; for the following year (13 Stat. at L. 99, chap. 106) power was granted to the states, not to tax the banks, their franchises or property, but to tax the shares of stock in the names of the shareholders. This provision subsequently was amended and supplemented in various particulars (15 Stat. at L. 34, chap. 7), and the result of this legislation is embodied in section 5219 of the Revised Statutes."

In the case of the *First National Bank* v. *City of Hartford,* 273 U. S. 548, 71 L. Ed. 767, the court held void a discriminatory tax on shares of the capital of the bank on the ground that any attempt to discriminate against the capital invested in national bank shares is intended to be forbidden by R. S. 5219, and the court again called attention to the principle involved:

"National banks are not merely private moneyed institutions, but agencies of the United

States created under its law to promote its fiscal policies; and hence the banks, their property and their shares cannot be taxed under state authority except as Congress consents and then only in conformity with the restrictions attached to its consent. *First Nat. Bank* v. *Anderson, supra,* 347 (70 L. Ed. 302, 46 Sup. Ct. Rep. 135); *Des Moines Nat. Bank* v. *Fairweather,* 263 U. S. 103, 106, 88 L. Ed. 191, 195, 44 Supt. Ct. Rep. 23."

See also *First National Bank of Guthrie Center (Iowa)* v. *Anderson, Auditor,* 269 U. S. 341, 70 L. Ed. 295.

However, it is contended by the Solicitor-General on behalf of the Collector that the principle of exemption from taxation of the instrumentalities of the Federal Government applies only to the States of the American Union and arises from the peculiar relation between the Federal Government and the State government, each being sovereign within its respective sphere. If a State government should have the power to tax national banks without the consent of Congress, it would be possessed of the power to cripple these national instrumentalities, if not entirely to destroy them. But it is argued that no such relation exists between the Federal Government and a dependency like the Philippine Islands, which is under the direct and plenary control of Congress. Attention is called to section 19 of the Act of Congress of August 29, 1916, 39 Stat. 551, which provides that "all laws enacted by the Philippine Legislature shall be reported to the Congress of the United States which reserves the power and authority to annul the same".

Whatever may be said *ex hypothesi,* in support of the proposition that no such necessity for exemption

from taxation of the Federal instrumentalities exists in the Philippines as in the several States, the contrary is definitely settled by the decisions of this court. We said in the case of the *Standard Oil Company of New York* v. *Juan Posadas, Jr.*, 55 Phil. 715, 717-718:

> "It would further appear perfectly clear that the principle which prohibits a State from taxing the instrumentalities of the Federal Government applies with equal force to the Philippine Islands. At least, that was our holding in the *Post Exchange* case. Nevertheless the Attorney-General persists in assuming a difference in tax powers between the relations of the Philippine Government to the National Government and of a State government to the National Government. We are frank to say that we are unable to see eye to eye with the Attorney-General. It would be absurd to think that a derivative sovereignty like the Government of the Philippine Islands, could tax the instrumentalities of the very government which brought it into existence. If a sovereign State of the American Union cannot abridge or restrict the activities of the United States Government, much less can a creature of that Government, as the Philippine Government is, do so."

In the recent case of *Genato Commercial Corporation* v. *Insular Collector of Customs,* promulgated March 13, 1934, Vol. XXXII Off. Gaz. No. 69, page 1327, this Court said:

> "Without Congressional consent, no Federal agency or instrumentality can be taxed by the Government of the Philippine Islands."

See also *National City Bank of New York* v. *Domenech, Treasurer of Porto Rico,* 71 Fed. (2nd) 13.

This brings us to the question whether or not the Congress of the United States has given its consent that the National City Bank of New York should be subjected to the capital tax and the deposit tax here involved. The only statute in which Congress has consented that national banks may be subjected to local taxation is R. S. 5219 as amended by the Acts of March 4, 1923, 42 Stat. 1499 (U. S. C. Title 12, section 548), and the Act of March 25, 1926, 44 Stat. Chap. 88, 223. This is in part as follows:

> "Sec. 5219. The legislature of each State may determine and direct, subject to the provisions of this section, the manner and place of taxing all the shares of national banking associations located within its limits. The several States may (1) tax said share, or (2) include dividends derived therefrom in the taxable income of an owner or holder thereof, or (3) tax such associations on their net income, or (4) according to or measured by their net income, provided the following conditions are complied with:
>
> "1. (a) the imposition by any State of any of the above four forms of taxation shall be in lieu of the others, except as hereinafter provided in subdivision (c) of this clause."

The Solicitor-General on behalf of the Collector contends that R. S. 5219 has never been extended to the Philippine Islands and is limited in its application to States of the American Union. The logical conclusion of his argument is that there are no express limitations or restrictions whatever upon the

Government of the Philippine Islands as regards the kind or amount of taxes it may levy upon national banks. It is not so stated but we assume the Solicitor-General would admit the implied limitation that no tax would be valid which would impair the usefulness of such banks as instrumentalities of the Federal Government.

The National City Bank of New York, as appellant, contends that R. S. 5219 was in force in the Philippine Islands before the enactment of the Act of August 29, 1916 (the Jones Law), 39 Stat. 547, and that it was continued in force under Section 6 of said Act which provides:

> "Sec. 6. That the laws now in force in the Philippines shall continue in force and effect, except as altered, amended, or modified herein, until altered, amended, or repealed by the legislative authority herein provided or by Act of Congress of the United States."

It is further intimated that the very Act of Congress authorizing the establishment of branches of national banking associations in the dependencies or insular possessions of the United States makes R. S. 5219 applicable to the Philippine Islands.

It is enough to say that except as provided in R. S. 5219, *supra,* Congress has not given its consent to the taxation of national banking associations as such. The language of that statute, as amended by the Act of March 25, 1926, is plain as to the four forms of taxation authorized. The omission of any reference to capital and deposit taxes in R. S. 5219 means simply that Congress has withheld its consent to these forms of taxation of national banks.

In the recent case of *National City Bank of New York* v. *Domenech, Treasurer of Puerto Rico,* 71 Fed. (2nd) 13, decided on May 18, 1934, the Circuit Court of Appeals of the First Circuit held void a capital tax similar to the one here in question levied by the government of Puerto Rico.

In so far as the judgment of the court below orders the refund of the deposit taxes paid under protest by the National City Bank of New York for the first six months of the year 1931, the same is affirmed; and in so far as it sustains the capital tax levied for the same period as aforesaid, it is reversed and the defendant Collector of Internal Revenue is ordered to refund to the said bank the entire amount of P77,-324.11 paid under protest as capital and deposit taxes, without interest (Section 1579, Administrative Code) or costs.

GEORGE BUTTE.

We concur:

(Sgd.) THOS. A. STREET.
(Sgd.) GEO. A. MALCOLM.
(Sgd.) ANTONIO VILLA-REAL.
(Sgd.) J. A. HULL.
(Sgd.) J. C. VICKERS.
(Sgd.) C. A. IMPERIAL.
(Sgd.) LEONARD S. GODDARD.
(Sgd.) ANACLETO DIAZ.

The Chief Justice took no part.
Justice Santos dissents in separate opinion.

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# Supreme Court of the United States

OCTOBER TERM, 1935.

No. 114.

JUAN POSADAS, JR., Collector of Internal Revenue of the Philippine Islands,

*Petitioner,*

against

THE NATIONAL CITY BANK OF NEW YORK,

*Respondent.*

## SUPPLEMENTARY BRIEF FOR RESPONDENT SUBMITTED BY LEAVE OF THE COURT

HARRY W. FORBES,
*Attorney for Respondent.*

CARL A. MEAD,
*Of Counsel.*

CASLON PRESS, INC. WASHINGTON, D. C.

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It is the contention of the Respondent that the question whether the National Bank Act and the Federal Reserve Act extend to the Philippine Islands has no bearing on the question whether the Philippine Government, having collected an income tax, as permitted by the National Bank Act, has the power to impose and collect, in addition, taxes on the capital and deposits of the Philippine Branches of the Respondent.

The question whether a national bank could be incorporated under the National Bank Act, with its head

office in the Philippine Islands, is not involved in this case.

In case the Court should consider this question material, however, it is submitted that Congress has clearly disclosed an intent that the National Bank Act and the Federal Reserve Act should extend to the Philippine Islands. This appears from a chronological review of the pertinent acts of Congress.

I. The National Bank Act was originally enacted on February 25, 1863 (12 Stat. 665, Ch. LVIII).

As originally enacted, it contained no provision authorizing the States to tax national banks. Such a provision was enacted on June 3, 1864 (13 Stat. 99, Ch. 106, Sec. 41, p. 112).

This statute has been amended from time to time and is now Section 5219 of the Revised Statutes. (See our former brief, pp. 23-25.)

On February 25, 1927, the National Bank Act was amended (40 Stat. 1224, Ch. 191) by an Act entitled "An Act to further amend the National Banking Laws and the Federal Reserve Act and for other purposes."

Section 6 of that Act amended Section 5155 of the Revised Statutes relating to local branches of national banks and contained the following provision referring to the Federal Reserve Act (post, pp. 8-11).

> "(g) This section shall not be construed to amend or repeal Section 25 of the Federal Reserve Act as amended authorizing the establishment by national banking associations of branches in foreign countries or dependencies or insular possessions of the United States."

This provision was continued in the Act of August 23, 1935, Ch. 614, Sec. 305 (U. S. C., Compact Edition,

October, 1925, Special Pamphlet 99, p. 88) amending 12 U. S. C. A., Sec. 36, of the National Bank Act, relating to local branches of national banks.

II. R. S. Section 1891, which was originally contained in the first edition of the Revised Statutes of 1874, provides:

> "The Constitution and all laws of the United States which are not locally inapplicable shall have the same force and effect within all the organized Territories, and in every Territory hereafter organized, as elsewhere within the United States."

III. On March 30, 1891, this Court handed down its decision in *Talbott* v. *Silver Bow County* (139 U. S. 438, 442), in which it held:

> "The national banking system was national in its design, co-extensive in its operation with the territorial limits of the United States."

IV. The Philippine Islands were ceded to the United States by the treaty of peace with Spain on April 11, 1899 (48 U. S. C. A., Sec. 1001); and they thereupon became and are still "dependencies" of the United States.

V. On July 1, 1902, Congress passed the so-called Foraker Act, providing a temporary government for the Philippines (32 Stat. 691), Section 1 of which contains the following provision:

> "The provisions of Section 1891 of the Revised Statutes of 1878 shall not apply to the Philippine Islands."

The intention of Congress, however, that the National Bank Act should extend to the Philippine Islands was disclosed by Section 85 of the Foraker Act, which provided:

> "That the treasury of the Philippine Islands and *such banking associations in said islands* with a paid up capital of not less than two million dollars *and chartered by the United States* or any State thereof as may be designated by the Secretary of War and the Secretary of the Treasury of the United States shall be depositories of public money of the United States, subject to the provisions of existing law governing such depositories in the United States; *Provided,* That the treasury of the government of said islands shall not be required to deposit bonds in the Treasury of the United States, or to give other specific securities for the safe-keeping of public money except as prescribed, in his discretion, by the Secretary of War."

This Section, making it lawful to deposit government moneys in "banking associations in said Islands * * * chartered by the United States" evidently contemplates that national banking associations may be incorporated in the Philippine Islands, and therefore that the National Bank Act, in all its provisions, extends to those Islands.

The same intent is expressed in Section 8 of the Act of March 2, 1903, Ch. 980 (32 Stat. 952) entitled "An Act to establish a standard of value and to provide for a coinage system in the Philippine Islands," as amended (48 U. S. C. A., Sec. 1153), which provides that silver certificates, issued by the Treasurer of the Philippine Islands, "when held by *any banking asso-*

*ciation* in said islands, may be counted as a part of its lawful reserve."

This provision refers to the reserves of National Banking Associations operating in the Philippines under the National Bank Act.

VI. The Federal Reserve Act was originally enacted on December 23, 1913 (38 Stat. 251, Ch. 6).

Section 19, para. 21, of that Act provided:

> "National banks located in Alaska or outside the continental United States may remain non-member banks, and shall in that event maintain reserves and comply with all the conditions now provided by law regulating them; or said banks, *except in the Philippine Islands,* may; with the consent of the Reserve Board, become member banks of any one of the reserve districts, and shall, in that event, take stock, maintain reserves, and be subject to all the other provisions of this Act."

This provision contemplates that national banks may be located "outside the continental United States," including the Philippine Islands. Such banks are required to "comply with all the conditions *now provided by law regulating them*"; that is, with the provisions of the National Bank Act regulating national banks. In other words, it necessarily follows from the first clause of this provision that the National Bank Act extends to the Philippine Islands.

That national banks, subject to the National Bank Act, may be located in the Philippine Islands appears from the further provision, contained in the second clause of the paragraph, that such banks, located in the Philippine Islands, may not become member banks of one of the reserve districts.

The provisions of Section 25 of the Federal Reserve Act, under which the National City Bank obtained permission to open its branches in the Philippines, are given in full in our former brief (pp. 27-8). That Act extended the charter powers of national banks so as to authorize them to establish branches "in foreign countries *or dependencies* of the United States for the furtherance of the foreign commerce of the United States, and to act, if required to do so, as fiscal agents of the United States."

The Philippine Islands were then a dependency of the United States.

This provision operated as an extension of the charter powers of national banks having the requisite amount of capital. It operated on such charters within the United States. It clearly gave to such national banks the power to open branches in any dependency of the United States, including the Philippine Islands.

The provision of the Foraker Act, to the effect that the then existing Constitution and laws of the United States should not extend to the Philippines, of course, had no effect on this subsequent Statute.

VII. The Jones Autonomy Act (39 Stat. 545, Ch. 416) entitled "An Act to Declare the Purpose of the People of the United States as to the Future Political Status of the People of the Philippine Islands and Provide a more Autonomous Government for those Islands," was enacted on August 29, 1916. Prefixed to the Act is a recital of the purpose of the United States to withdraw its sovereignty over the Philippine Islands "as soon as a stable government can be established therein * * * *without in the meantime impairing the exercise of the rights of sovereignty by the people of the United States.*"

It is clear from this recital that Congress did not intend, by this Act, to waive the immunity of government instrumentalities from taxation by the Philippine Government.

Section 5 of the Jones Act provides:

> "That the statutory laws of the United States *hereafter enacted* shall not apply to the Philippine Islands except when they specifically so provide, *or it is so provided in this Act.*"

As this provision related only to statutes *thereafter enacted,* it had no effect whatever on the previously enacted National Bank Act and Federal Reserve Act. It merely established a general rule of construction for subsequent acts of Congress. It could not, of course, restrict the power of subsequent Congresses to legislate for the Philippine Islands, if they so desired.

Section 6 of the Jones Act provides:

> "That the laws *now in force* in the Philippines shall continue in force and effect except as altered, amended or modified herein until altered, amended or repealed by the legislative authority herein provided or by act of Congress of the United States."

This provision obviously refers to the Spanish body of law, which had previously prevailed in the Philippine Islands. It does not refer to Acts of Congress; nor does Section 7 of the Jones Act, giving to the Philippine legislature power to "amend, alter, modify or repeal any law, civil or criminal, continued in force by this Act" apply to Acts of Congress, since a delegation of power to the Philippine Government to

repeal Acts of Congress would have amounted to a complete surrender of sovereignty over the Philippines, contrary to the intent declared in the preamble of the Act.

The Petitioner contends (Brief, pp. 43-4) that Congress, by this Section, validated the Philippine statute taxing National Banks, passed only *one month and twenty-nine days* before, although Congress may not even have known of this very recent statute.

However, Section 6 was not intended as a declaration of *what statutes* were in force. Only statutes "now in force," that is, *valid statutes,* were continued in effect by this Section.

Section 31 of the Jones Act provides:

> "That all laws or parts of laws applicable to the Philippines, not in conflict with any of the provisions of this Act, are hereby continued in force and effect."

This provision clearly refers to Acts of Congress, and continues in effect Section 85 of the Foraker Act of 1902, relating to depositories of public money of the United States, which section recognizes, as already stated, that the National Bank Act extends to the Philippine Islands.

VIII. The same clear intent appears from the amendments to the Federal Reserve Act, enacted subsequently to the Jones Act.

By the Act of September 7, 1916 (39 Stat. 752, Ch. 461, p. 755), the words of Section 25, "to establish branches in foreign countries or dependencies of the United States," were changed so as to read, "to establish branches in foreign countries or dependencies *or insular possessions* of the United States."

This amendment was passed only nine days after the Jones Act. It is the Petitioner's contention that, by this amendment, enacted after the Jones Act, Congress intended, under the general provision of Section 5 of the Jones Act, before referred to, to amend the previously enacted Federal Reserve Act, so that it should authorize the establishment of branches of national banks only in dependencies *other than the Philippine Islands;* in other words, that this amendment repealed by implication the permission granted to national banks by the Federal Reserve Act of 1913 to establish branches in the Philippines.

The respondent submits, on the other hand, that the addition of the words "or insular possessions" makes even more clear the intention of Congress, by the Federal Reserve Act, to extend the charter powers of national banks so that they could establish branches in *all* dependencies and insular possessions of the United States, *including the Philippine Islands.*

The Virgin Islands were acquired from Denmark by a Convention, entered into August 4, 1916, and ratified by the Senate on September 7, 1916 (48 U. S. C. A., Sec. 1391, p. 358, Historical Note), on the same day that the 1916 amendment of the Federal Reserve Act was approved; and that may have been the reason for adding the words "or insular possessions" to Section 25 of the Federal Reserve Act.

By Act of December 24, 1919 (41 Stat. 378, Ch. 18) entitled "An Act to Amend the Act approved December 23, 1913, known as the Federal Reserve Act" a new section was added to the Federal Reserve Act, known as Section 25A, authorizing the organization of corporations

> "for the purpose of engaging in international or foreign banking or other international or

> foreign financial operations or in banking or other financial operations *in a dependency or insular possession of the United States,* either directly or through the agency, ownership or control of local institutions in foreign countries, *or in such dependencies or insular possessions as provided by this section,* and to act, when required by the Secretary of the Treasury, as fiscal agents of the United States."

This Act is known as the Edge Act and was further amended on February 27, 1921 (41 Stat. 1145, Ch. 73, 12 U. S. C. A., Sec. 611, p. 486), by adding the following proviso:

> "*Provided,* that nothing in this section shall be construed to deny the right of the Secretary of the Treasury to use any corporation organized under this section as depositories in Panama or the Panama Canal Zone *or in the Philippine Islands* and other insular possessions and dependencies of the United States."

This provision specifically refers to the Philippine Islands and shows the intention of Congress that the Federal Reserve Act should extend to those Islands.

The provision of Section 19 of the Federal Reserve Act, hereinbefore quoted, providing that national banks in the Philippine Islands might not become members of the Federal Reserve System, was amended on June 21, 1917 (40 Stat. 240, 12 U. S. C. A., Sec. 466, p. 356) so as to read:

> "National banks, or banks organized under local laws, located in Alaska *or in a dependency or insular possession or any part of the United States outside the continental United States* may remain non-member banks, and shall in that

> event maintain reserves and comply with all the conditions *now provided by law regulating them;* or said banks may, with the consent of the Reserve Board, become member banks of any one of the reserve districts, and shall in that event take stock, maintain reserves, and be subject to all the other provisions of this chapter."

That amendment substituted for the words "located in Alaska or outside the continental United States" the words, "located in Alaska or in a dependency or insular possession or any part of the United States outside the continental United States," thus emphasizing the intention that the provision should apply to national banks located in the Philippine Islands, which were then a dependency or insular possession of the United States.

IX. The petitioner refers to various statutes, some of which were enacted after these taxes were imposed in 1931, namely, the National Prohibition Act (42 Stat. 223, Nov. 23, 1921); The National Industrial Recovery Act (48 Stat. 195, June 16, 1933); and the Narcotic Drugs Act (43 Stat. 657, June 7, 1924, 21 U. S. C. A., Sec. 173) and to the opinions of the Attorneys General holding that those acts did not extend to the Philippine Islands, notwithstanding the general terms of those acts, because they did not mention the Philippine Islands by name.

The National Prohibition Act extended "not only to the United States but to all territories subject to its jurisdiction, including the territory of Hawaii and the Virgin Islands." (42 Stat. 223; 27 U. S. C. A., Sec. 2.)

The National Industrial Recovery Act (48 Stat. 198; 15 U. S. C. A., Supp., Sec. 707(d)) applied to

"trade or commerce among the several States and with foreign nations, or between the District of Columbia or any Territory of the United States and any State, Territory, or foreign nation, or between any insular possessions or other places under the jurisdiction of the United States, or between any such possession or place and any State or Territory of the United States or the District of Columbia or any foreign nation, or within the District of Columbia or any Territory or any insular possession or other place under the jurisdiction of the United States."

The Narcotic Drugs Act extends to "the United States or any territory under its control or jurisdiction" (43 Stat. 657; 21 U. S. C. A., Sec. 173).

If these opinions have any bearing whatever upon the present question, they are wholly contrary to the action taken by the administrative officers of the Government under a still later Act. On March 9, 1933, Congress passed an Act entitled "An Act to Provide Relief in the existing National Emergency in Banking and for other purposes" (43 Stat. 1), amending a previous Act (40 Stat. 411) so as to provide that, during time of war or emergency, "the President may * * * prohibit * * * hoarding * * * of gold or silver coin * * * by any person within the United States *or any place subject to the jurisdiction thereof.*" Section 3 of the same Act (48 Stat. 2) gave to the Secretary of the Treasury power, in his discretion, to require any and all individuals, etc., to pay and deliver to the Treasurer of the United States any and all gold coin, etc.

The Act of January 30, 1934, entitled "An Act to Protect the Currency System of the United States, to Provide for the better use of the Monetary Gold

Stock of the United States and for other purposes" (48 Stat. 337, Ch. 6), contains further provisions relating to the same general subject.

Although these Acts contain no express reference to the Philippine Islands and apply only to "any place subject to the jurisdiction" of the United States, the Governor General of the Philippine Islands issued a proclamation, under date of February 21, 1934, referring to the Gold Reserve Act of January 30, 1934, in which he stated that title to the entire stock of monetary gold in the United States was vested in the United States Government. He further stated:

> "I am further advised that every person, partnership or corporation owning United States gold coins or United States gold certificates, whether domiciled or not, whether doing business or not within the continental United States, if subject to the jurisdiction and protection of the United States by their presence in the Philippine Islands, *thus including every person now residing or present in the Philippines,* must deliver any and all United States gold coins or gold certificates held by them to the United States Treasury through the National City Bank of New York, Manila Branch."

This action of the Governor General of the Philippine Islands was an administrative determination that the words "or any place subject to the jurisdiction of the United States" extended the Gold Reserve Act to the Philippine Islands. This was further recognized by the Bureau of the Treasury of the Department of Finance of the Government of the Philippine Islands, in their letter to the Manila branch of the respondent, dated May 27, 1935, as follows:

"The Government of the Philippine Islands

Department of Finance

BUREAU OF THE TREASURY

Manila

May 27, 1935

The Pro-Manager,
National City Bank of New York,
Manila.

Dear Sir:

In reply to your letter of the 22nd instant regarding exchange of U. S. silver and small coins for pesos, I wish to inform you that the reason for the order is that silver and other minor coins of the United States that are being received in this office from the public and the several institutions, including the banks, are only accumulated in our vaults for lack of demand therefor, and the only way we could dispose of them is thru their remittance to the United States Treasury for final redemption. Inasmuch as your bank is a member of the Federal Reserve System of the United States and therefore is also an instrumentality of the United States Federal Government in connection with the issue, exchange and redemption or replacement of United States currency, it was thought that you could and should dispose of the coins collected by your bank from its clients, including the direct remittance of the same to the United States Treasury, without passing them over to this Bureau.

However, the matter is now under advisement and in the meantime the order given by this Office is temporarily lifted.

Yours very truly,

ANTONIO RAMOS
Acting Insular Treasurer."

It is submitted that, if the question is at all material, it is clearly the intent of Congress to extend the National Bank Act and the Federal Reserve Act to the Philippine Islands.

The judgment of the Supreme Court of the Philippine Islands should be affirmed, with costs.

Washington, December 13, 1935.

HARRY W. FORBES,
*Attorney for Respondent.*

CARL A. MEAD,
*Of Counsel.*

# SUPREME COURT OF THE UNITED STATES.

No. 114.—October Term, 1935.

Juan Posadas, Jr., Collector of Internal Revenue of the Commonwealth Government of the Philippine Islands, Petitioner,
*vs.*
The National City Bank of New York.

On Writ of Certiorari to the Supreme Court of the Philippine Islands.

[January 6, 1936.]

Mr. Justice Sutherland delivered the opinion of the Court.

The National City Bank of New York is organized under the National-Banking Act, as amended from time to time since its enactment. In 1930 the bank, after complying with the requirements of § 25 of the Federal Reserve Act of December 23, 1913, c. 6, 38 Stat. 251, 273, as amended September 7, 1916, c. 461, 39 Stat. 752, 755, *infra*, established branches at Manila and Cebu in the Philippine Islands. A tax was levied by and paid to the Philippine Government on the net income of these branches for the first six months of the year 1931 (R. S. § 5219),[1] about which there is no controversy. The Philippine Government, however, in addition, levied capital and deposit taxes not permitted by § 5219, and, these having been paid by the bank under protest, this action was brought in the Court of First Instance of Manila to recover the amount. That court gave judgment in favor of the bank for only a part of the additional taxes; but the Philippine Supreme Court, upon appeal, reversed the judgment in so far as it was against the bank, and ordered a refund of the entire amount. — Phil. —.

[1] Sec. 5219, Revised Statutes (12 U. S. C. [1934 ed.] § 548), provides that the legislature of each state may "(1) tax said shares, or (2) include dividends derived therefrom in the taxable income of an owner or holder thereof, or (3) tax such associations on their net income, or (4) according to or measured by their net income, . . ." provided certain specified conditions are complied with.

Section 25 of the Federal Reserve Act of 1913, *supra*, reproduced in the margin so far as it is pertinent here,[2] authorizes the establishment of branches of national-banking associations "in foreign countries or dependencies of the United States". It cannot be doubted that, viewing this section without regard to later legislation, the branches here in question were lawfully established; for, as will appear at a later point in this opinion, the Philippine Islands are included by the words "dependencies of the United States". In that view of the matter, the additional taxes imposed by the Philippine Government are invalid under *Domenech* v. *National City Bank*, 294 U. S. 199, 204; *Talbott* v. *Silver Bow County*, 139 U. S. 438; and, were it not for the asserted effect of legislation subsequent to the passage of the Federal Reserve Act in 1913, which we shall examine in a moment, this case would be disposed of, without further detail, upon the authority of those cases. In the *Domenech* case we held that the national-banking laws extended to Puerto Rico; that a tax on a branch of a national bank is a tax on the bank; and that Puerto Rico, being a dependency of the United States, could not, except as permitted by R. S. § 5219, tax a national bank, since it is an agency of the United States. The *Talbott* case involved the power of a territory to impose a tax upon a national bank. This court held, in the first place, that the same power of taxation in respect of national banks exists in the territories as in the states; and, in the second place, that this power of taxation in the territories was limited by the provisions of § 5219 although in terms that section refers only to the states. 294 U. S. 204. We find nothing in the original Organic Act or in any of the early statutes relating to the Philippines referred to by petitioner which take those islands out of the controlling rule of the *Domenech* case that "a de-

[2] "Sec. 25. Any national banking association possessing a capital and surplus of $1,000,000 or more may file application with the Federal Reserve Board, upon such conditions and under such regulations as may be prescribed by the said board, for the purpose of securing authority to establish branches in foreign countries or dependencies of the United States for the furtherance of the foreign commerce of the United States, and to act, if required to do so, as fiscal agents of the United States. Such application shall specify, in addition to the name and capital of the banking association filing it, the place or places where the banking operations proposed are to be carried on, and the amount of capital set aside for the conduct of its foreign business. The Federal Reserve Board shall have power to approve or to reject such application if, in its judgment, the amount of capital proposed to be set aside for the conduct of foreign business is inadequate, or if for other reasons the granting of such application is deemed inexpedient.

pendency may not tax its sovereign''; and we come to the only remaining point which we deem it necessary to discuss.

Petitioner contends that subsequent legislation has the effect of repealing and abrogating § 25 of the 1913 act, permitting the establishment of national bank branches, in so far as the Philippine Islands are concerned. This later legislation consists of certain provisions in the Organic Act for the Philippine Islands of August 29, 1916, c. 416, 39 Stat. 545, and the act of September 7, 1916, *supra,* amending designated sections of the original Federal Reserve Act.

We examine these statutory provisions in their chronological order. By § 25 of the 1913 act, as we have seen, national banks were authorized to establish branches in the Philippine Islands. The Organic Act of 1916 provides:

"Sec. 5. That the statutory laws of the United States hereafter enacted shall not apply to the Philippine Islands, except when they specifically so provide, or it is so provided in this Act.

"Sec. 6. That the laws now in force in the Philippines shall continue in force and effect, except as altered, amended, or modified herein, until altered, amended, or repealed by the legislative authority herein provided or by Act of Congress of the United States."

(Section 6 obviously is to be taken distributively—that is to say, as conferring power on the local legislature to deal only with local laws. It, of course, confers no power on the local legislature to alter, amend or repeal an act of Congress.)

"Sec. 31. That all laws or parts of laws applicable to the Philippines not in conflict with any of the provisions of this Act are hereby continued in force and effect."

By sections 6 and 31 it is clear that § 25 of the Federal Reserve Act of 1913, not being in conflict with any provision of the Organic Act of 1916, was continued in full force and effect.

September 7, 1916, nine days after the passage of the new Organic Act, the act to amend the Federal Reserve Act, *supra,* was passed. It, first, is to be observed in respect of this amending act that it does not purport to enact a substitute for the Federal Reserve Act, or to repeal and re-enact any portion, but only to *amend* certain specified sections thereof. The old act contains thirty sections. The act of September 7, 1916, amends §§ 11, 13, subsection (e) of § 14, the second paragraph of § 16, §§ 24 and 25, and § 5202

of the Revised Statutes. The introductory words as to § 25 are—"That section twenty-five be, and is hereby, amended to read as follows". The original section is then copied, the only change or addition, so far as the question here is concerned, being the insertion of the words "or insular possessions" after the word "dependencies". No reason appears from anything called to our attention, and we are not ourselves aware of any reason, for the addition of these words, since the comprehensive term "dependencies" would seem to include all insular possessions which we then had. But in any event, the Philippine Islands constituted a dependency, for they were not possessions merely, but possessions held by right of cession from Spain and over which the United States undoubtedly had supreme power of legislation and government. See *United States* v. *The Nancy*, 3 Wash. C. C. 281, 286 *et seq.* Compare 34 Op. Atty. Genl. 287, 291. The only substantial change made in the old § 25 is the addition of a provision authorizing a national-banking association to invest in the stock of other banks and corporations chartered or incorporated under the laws of the United States or of any state engaged in international or foreign banking, or banking in dependencies or insular possessions of the United States; and it is fairly plain that this addition constituted the sole reason for amending the section.

The amending act just described contains no words of repeal; and if it effected a repeal of § 25 of the 1913 act, it did so by implication only. The cardinal rule is that repeals by implication are not favored. Where there are two acts upon the same subject, effect should be given to both if possible. There are two well-settled categories of repeals by implication—(1) where provisions in the two acts are in irreconcilable conflict, the later act to the extent of the conflict constitutes an implied repeal of the earlier one; and (2) if the later act covers the whole subject of the earlier one and is clearly intended as a substitute, it will operate similarly as a repeal of the earlier act. But, in either case, the intention of the legislature to repeal must be clear and manifest; otherwise, at least as a general thing, the later act is to be construed as a continuation of, and not a substitute for, the first act and will continue to speak, so far as the two acts are the same, from the time of the first enactment.

The law on the subject as we have just stated it finds abundant support in the decisions of this court, as well as in those of lower

federal and state courts. It will be enough to direct attention to a few of these decisions out of a very large number. In *United States* v. *Tynen,* 11 Wall. 88, 92, Mr. Justice Field, speaking for the court, after stating the general rule, said that if two acts "are repugnant in any of their provisions, the latter act, without any repealing clause, operates to the extent of the repugnancy as a repeal of the first; and even where two acts are not in express terms repugnant, yet if the latter act covers the whole subject of the first, and embraces new provisions, plainly showing that it was intended as a substitute for the first act, it will operate as a repeal of that act." It was not meant by this statement to say, as a casual reading of it might suggest, that the mere fact that the latter act covers the whole subject and embraces new provisions demonstrates an intention completely to substitute the latter act for the first. This is made apparent by the decision in *Henderson's Tobacco,* at the same term, 11 Wall. 652, 657, where, in an opinion delivered by Mr. Justice Strong, it is said, "But it must be observed that the doctrine [of the *Tynen* case] asserts no more than that the former statute is impliedly repealed, *so far* as the provisions of the subsequent statute are repugnant to it, or *so far* as the latter statute, making new provisions, is plainly intended as a substitute for it. Where the powers or directions under several acts are such as may well subsist together, an implication of repeal cannot be allowed." (Italics are in the original.) These two cases, with others, are briefly reviewed by this court in *Red Rock* v. *Henry,* 106 U. S. 596, 601, by Mr. Justice Woods, and the court's conclusion stated as follows:

"The result of the authorities cited is that when an affirmative statute contains no expression of a purpose to repeal a prior law, it does not repeal it unless the two acts are in irreconcilable conflict, or unless the later statute covers the whole ground occupied by the earlier and is clearly intended as a substitute for it, and the intention of the legislature to repeal must be clear and manifest."

The implication of which the cases speak must be a necessary implication. *Wood* v. *United States,* 16 Pet. 342, 362-363. It is not sufficient, as was said by Mr. Justice Story in that case, "to establish that subsequent laws cover some or even all of the cases provided for by [the prior act]; for they may be merely affirmative, or cumulative, or auxiliary." The question whether a statute

is repealed by a later one containing no repealing clause, on the ground of repugnancy or substitution, is a question of legislative intent to be ascertained by the application of the accepted rules for ascertaining that intention. *United States* v. *Claflin*, 97 U. S. 546, 551; *Eastern Extension Tel. Co.* v. *United States*, 231 U. S. 326, 332. And, even in the face of a repealing clause, circumstances may justify the conclusion that a later act repeating provisions of an earlier one is a continuation, rather than an abrogation and reenactment, of the earlier act. *Bear Lake Irrigation Co.* v. *Garland*, 164 U. S. 1, 11-13.

Petitioner relies on *Murdock* v. *Memphis*, 20 Wall. 590, 617; but it is sufficient to say that the rule which we have quoted from *Red Rock* v. *Henry, supra*, was formulated with that case in mind, since it is specifically mentioned.

In some of the states, the principle has been embodied in statutes to the general effect that provisions of a prior statute, so far as they are reproduced in a later one, are to be construed as a continuation of such provisions and not as a new enactment. See *Barrows* v. *People's Gaslight & Coke Co.*, 75 Fed. 794, 795. But such statutes are only declaratory of the rule of the common law. *Dallmann* v. *Dallmann*, 159 Wisc. 480, 485-486; *Julien* v. *Model B., L. & I. Asso.*, 116 Wisc. 79, 89-90. See, also, *Ely and others* v. *Holton*, 15 N. Y. 595, 598, 599; *Moore* v. *Mausert et al.*, 49 N. Y. 332, 335; *Longlois* v. *Longlois et al.*, 48 Ind. 60, 63-64; *The People* v. *N. Y., C. & St. L. R. R. Co.*, 316 Ill. 452, 457-458.

Applying the rule established by the foregoing and other authorities, we see nothing in the terms of the Federal Reserve amending act, in the provisions of the new Organic Act, or in the history of Philippine legislation, which justifies the conclusion that by the amendment of 1916 Congress intended to repeal the old § 25 of the Federal Reserve Act. The amendment is made in a well-approved form—a form which, indeed, many of the states compel by constitutional provision—namely, by repeating the language of the original section with the additions to which we have heretofore called attention. Unless the contrary plainly appear, the employment of such form of amendment is simply to serve the causes of convenience and certainty. That is to say, by carrying the full text forward, the task of searching out and bringing together the various fragments which go to make up the completed whole,

after specific eliminations or additions by amendment, is rendered unnecessary; and possible doubt as to the precise terms of the law as amended is avoided. Or, as Chief Judge Denio said in *Ely and others* v. *Holton, supra,* —.

"In short, we attribute no effect to the plan of dove-tailing the amendment into the original section, except the one above suggested, of preserving a harmonious text, so that when future editions shall be published the scattered members shall easily adjust themselves to each other."

It follows that such parts of the original § 25 as were copied into the amended section were not thereby repealed and immediately reenacted, but continued, uninterruptedly, to be the law after the amendment precisely as they were before. Section 5 of the Organic Act of 1916, *supra,* which in terms relates only to laws *thereafter* enacted, must be put aside as not applicable.

*Judgment affirmed.*

A true copy.

Test:

*Clerk, Supreme Court, U. S.*